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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 2004–42]

RIN 1550–AB48

Community Reinvestment Act Regulations

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Final rule.

SUMMARY: In this final rule, OTS is revising the definition of "small savings association" under its Community Reinvestment Act (CRA) regulations. Under the revised definition, "small savings association" means a savings association with total assets of less than $1 billion. This definition will apply without regard to any holding company assets. This change will permit additional small savings associations to be subject to streamlined examinations as well as reduced data collection and reporting burdens under the CRA. This change is consistent with OTS's ongoing efforts to identify and reduce regulatory burden, particularly for smaller institutions. The final rule will not relieve small savings associations from other existing and ongoing compliance requirements or legal obligations under the CRA. At the same time, OTS is withdrawing other changes to the CRA regulations that had been proposed.

DATES: This final rule is effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Theresa A. Stark, Program Manager, Thrift Policy, (202) 906–7054; Richard Bennett, Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

After considering the comments on a joint advance notice of proposed rulemaking (ANPR) published on July 19, 2001 (66 FR 37602), and a joint notice of proposed rulemaking (NPR) published on February 6, 2004 (69 FR 5729), OTS is revising its regulation implementing the CRA (12 U.S.C. 2901 *et seq.*). This final rule revises the definition of "small savings association" to mean a savings association with total assets of less than $1 billion (without regard to any holding company assets). At the same time, OTS is withdrawing other changes to the CRA regulations that had been proposed in the NPR.

Background

In 1977, Congress enacted the CRA to encourage insured banks and thrifts to help meet the credit needs of their entire communities, including low- and moderate-income areas, consistent with safe and sound lending practices. In the CRA, Congress found that regulated financial institutions are required to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business, and that the convenience and needs of communities include the need for credit as well as deposit services. The CRA plays an important role in improving access to credit among under-served rural and urban communities.

On May 4, 1995, OTS, along with the Office of Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Board of Governors of the Federal Reserve System (FRB) (collectively, the banking agencies) adopted major amendments to regulations implementing the CRA (60 FR 22156). In connection with that rulemaking, the banking agencies received a large number of comments from small institutions seeking regulatory relief. These commenters stated that they incurred significant regulatory burdens and costs from having to document CRA performance, and that these burdens and costs impeded their ability to improve their CRA performance. The 1995 regulations reflected the banking agencies' objectives that the CRA regulations provide for performance-based assessment standards that minimize compliance burdens while stimulating improved performance.

Under the 1995 rule, an institution is considered small if, at the end of either of the two previous years, it had less than $250 million in assets and was independent or affiliated with a holding company with total bank and thrift assets of less than $1 billion. Under the regulations, a small institution's CRA performance is evaluated under a streamlined test that focuses primarily on lending. The test considers the institution's loan-to-deposit ratio; the percentage of loans in its assessment areas; its record of lending to borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of its loans; and its record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment areas.

The 2001 ANPR

In the 1995 rulemaking, the banking agencies stated that they intended to review the CRA regulations in 2002. The banking agencies indicated that the regulations would be reviewed for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. 60 FR 22156, 22177 (1995). The banking agencies initiated this review in July 2001 with the publication in the **Federal Register** of a joint ANPR (66 FR 37602). The banking agencies solicited comment on the fundamental issue of whether any change to the regulations would be beneficial or warranted. They specifically requested comment on eight discrete aspects of the regulations. One of those aspects involved small institutions and the streamlined small institution evaluation.

The ANPR explained that some had suggested that the asset thresholds for being considered a small institution are too low. Others had asserted that holding company assets are irrelevant—if an institution has less than $250 million in assets, it should be considered small even if it is affiliated with a large holding company. Still others had suggested that holding company assets are relevant only if the holding company provides support for CRA activities or otherwise directs the CRA activities of an institution.

The ANPR asked several questions concerning the small institution performance standards, including:

- Do the provisions relating to asset size and holding company affiliation provide a reasonable and sufficient standard for defining "small institutions" that are eligible for the streamlined small institution evaluation test? If so, why? If not, how should the regulations be revised?
- Are the small institution performance standards effective in evaluating such institutions' CRA performance? If so, why? If not, how should the regulations be revised?

Comments on the 2001 ANPR

The banking agencies received about 400 comment letters on the ANPR. As summarized in the 2004 NPR, most of these comments were submitted by banks, thrifts, and their trade associations ("financial institutions"), and by local and national nonprofit community advocacy and community development organizations ("community organizations").

Most small institutions commented that they were satisfied that qualifying under the "small institution" definition substantially reduced their CRA compliance burden. Many commenters, however, argued that the small institution performance standards should be available to a larger number of institutions. Generally, these commenters raised many of the same concerns raised in the 1995 rulemaking. Primarily, these commenters argued that the regulatory burden of the CRA rules impedes smaller banks from improving their CRA performance. Many financial institutions suggested that, to reduce undue burden, the agencies should raise significantly the small institution asset threshold and eliminate or significantly raise the holding company limitation. These commenters cited the burdens on retail institutions that are subject to the "large institution" CRA tests because they slightly exceed the asset threshold for small institutions. Commenters asserted that these institutions have difficulty achieving a "low satisfactory" or better rating on the investment test and, as a result, have difficulty achieving an "outstanding" rating overall. Commenters added that these institutions encounter serious challenges competing with larger institutions for suitable investments and, as a result, sometimes invest in activities inconsistent with their business strategy, their own best financial interests, or community needs. Commenters also asserted that data collection and reporting are proportionally more burdensome for institutions within a range moderately exceeding the threshold than for institutions far above the threshold.

Some commenters asserted that upon exceeding the $250 million threshold, institutions face a threefold increase in compliance costs for CRA due to the need for new personnel, data collection and reporting costs, and the particular burdens imposed by the investment test applicable to large retail institutions. They asserted that raising the existing asset threshold for small institutions would be consistent with the banking agencies' intent in 1995 to avoid regulatory burdens counterproductive to the objectives of the CRA. They also questioned the benefit of reporting small business and small farm loan data, especially by institutions that serve limited geographic areas. Some commenters suggested that institutions be relieved of reporting such data and that examiners instead sample files or review only the data gathered and maintained by institutions pursuant to other laws or procedures (for example, the Call Report or Thrift Financial Report).

Financial institutions also commented that changes in the industry had rendered the threshold out-of-date. They pointed to the consolidation in the banking and thrift industries through mergers and acquisitions, and the growing gap between "mega-institutions" and those under $1 billion in assets. They noted that the number of institutions considered small, and the percentage of overall bank and thrift assets held by those institutions, has decreased significantly since the 1995 revisions. The financial institutions suggested raising the small institution asset-size threshold from $250 million to amounts ranging from $500 million to $2 billion. They also generally suggested eliminating or raising the $1 billion holding company threshold. They contended that affiliation with a large holding company does not enable an otherwise small institution to perform any better under the large retail institution test than a small institution without such an affiliation.

Community organizations opposed changing the definition of "small institution." These commenters were primarily concerned that reducing the number of institutions subject to the large retail institution test—and, therefore, the investment test—would reduce the level of investment in low- and moderate-income urban and rural communities. Community organizations were also concerned that the reduction in publicly available small business and small farm loan data would follow a reduction in the number of large retail institutions.

The 2004 NPR

In the 2004 NPR, the banking agencies considered the institution asset-size and holding company asset-size thresholds in light of these comments. The NPR explained that the regulations distinguish between small and large institutions for several important reasons. The NPR noted that institutions' capacities to undertake certain activities, and the burdens of those activities, vary by asset size, sometimes disproportionately. Examples of such activities include identifying, underwriting, and funding qualified equity investments, and collecting and reporting loan data. The case for imposing certain burdens is sometimes more compelling with larger institutions than with smaller ones. For instance, the number and volume of loans and services generally tend to increase with asset size, as do the number of people and areas served, although the amount and quality of an institution's service to its community certainly is not always directly related to its size. Furthermore, evaluation methods appropriately differ depending on institution size.

The NPR further explained that the banking agencies originally included the holding company limitation to reflect the ability of a holding company of a certain size (over $1 billion) to support a bank or thrift subsidiary's compliance activities. The NPR noted, however, that anecdotal evidence suggested that a relatively small institution with a sizable holding company often finds addressing its CRA responsibilities no less burdensome than does a similarly-sized institution without a sizable holding company. Thus, the banking agencies proposed to eliminate the holding company limitation on small institution eligibility.

The preamble to the NPR indicated that several factors led the banking agencies to propose raising the asset threshold. First, with the increase in consolidation at the large end of the asset size spectrum, the gap in assets between the smallest and largest institutions has grown substantially since the line was drawn at $250 million in 1995. Because some compliance costs are fixed, the compliance burden on institutions in a range moderately exceeding any threshold, measured as the cost of compliance relative to asset size, generally will be proportionally higher than the burden on institutions far above the same threshold. Yet, the asset gap between the smallest institutions

above the threshold and the largest institutions continues to grow. As a result, the compliance burden on the smallest institutions above the threshold has grown disproportionately. Second, the number of institutions defined as "small" has declined by over 2,000 since the threshold was set in 1995, and their percentage of industry assets has declined substantially. Third, some asset growth since 1995 has been due to inflation, not real growth. Fourth, the banking agencies are committed to reducing burden where feasible and appropriate.

The NPR proposed to raise the small institution asset threshold to $500 million, without reference to holding company assets. The banking agencies calculated that raising the asset threshold to $500 million and eliminating the holding company limitation would reduce the number of institutions subject to the large retail institution test but decrease the percentage of industry assets subject to the large retail institution test only slightly.

The banking agencies explained that the proposed changes would not diminish in any way the obligation of all insured depository institutions subject to CRA to help meet the credit needs of their communities. Instead, the proposed changes were meant only to address the regulatory burdens associated with evaluating institutions under CRA. The NPR sought comment on whether the proposal would improve the effectiveness of CRA evaluations, while reducing unwarranted burden.

The NPR also proposed several additional changes to the CRA regulations involving institutions or affiliates that engage in discriminatory, illegal, or abusive credit practices and amending the specifications for the CRA Disclosure Statements that each agency banking prepares annually for each institution that reports data. The preamble to the NPR further indicated that the banking agencies would begin using publicly available HMDA and CRA data to disclose additional information in the public CRA performance evaluations. This final rule withdraws these other proposed changes to the CRA regulations.

Comments on the 2004 NPR

OTS received approximately 800 comments on the 2004 NPR. Most were from financial institutions and their trade associations ("Financial Institution Comments") or from consumer and community members and organizations (*e.g.*, civil rights organizations, Community Development Corporations, Community Development Financial Institutions, community developers, housing authorities, and individuals) ("Consumer Comments"). Other commenters included members of Congress, other Federal government agencies, and state and local governments, agencies, and organizations.

The Financial Institution Comments strongly supported raising the asset threshold and eliminating the holding company test. Most of these commenters expressly supported raising the asset threshold beyond the level in the proposed rule. Most suggested thresholds ranging from $1 billion to $2 billion. Many commenters argued that raising the asset threshold would reduce regulatory burden and allow community banks to focus their resources on economic development and meeting credit demands of the community, rather than compliance burdens. They also asserted that raising the asset threshold was necessary to reflect consolidation in the bank and thrift industries. Other commenters noted that raising the asset threshold to $1 billion would have only a small effect on the amount of total industry assets under the large institution test but would provide substantial additional relief by reducing the compliance burden on more than 500 additional institutions.

The Consumer Comments strongly opposed raising the asset threshold and urged the banking agencies to withdraw the proposed rule. Most of the comments focused on the proposed raising of the asset threshold to $500 million but did not specifically mention the proposed elimination of the holding company test. Many Consumer Comments argued that raising the asset threshold would eliminate the investment and service parts of the CRA examination for many institutions, would reduce the rigor of CRA examinations, and would lead to less access to banking services and capital for underserved communities. In particular, these commenters argued that Low Income Housing Tax Credits and Individual Development Accounts would suffer, diminishing the effectiveness of the Administration's housing and community development programs. The commenters observed that this would be contrary to the statutory obligation on financial institutions to affirmatively serve credit and deposit needs on a continuing basis. Commenters also noted that the change would disproportionately affect rural communities and small cities where smaller institutions have a significant market share. Other commenters emphasized the need for rural banks and other depository institutions to serve the investment and deposit needs of all the communities in which they are chartered and from which they take deposits.

Comments from members of Congress were mixed. One letter (including House Capital Markets Subcommittee Chairman Richard Baker and six other Republican members of the House Financial Services Committee) supported raising the asset threshold to $1 billion. It stated that such a move would not have a significant impact on the total amount of assets nor the total number of institutions covered by the large institution examination, but would provide relief to many additional institutions. Congressional Democrats, on the other hand, opposed raising the asset threshold. OTS received one letter from 31 Senators (including Senate Banking Committee Ranking Member Paul Sarbanes), one letter from Senators Herb Kohl and Russell D. Feingold, one letter from seven House Representatives (including House Financial Services Committee Ranking Member Barney Frank), one letter from House Financial Services Committee Member Nydia Velazquez, and one letter from House Representative Louise Slaughter. These letters echoed the Consumer Comments discussed above.

Today's Final Rule

Having carefully reviewed all the comments submitted, OTS is amending the definition of "small savings association" to mean a savings association with total assets of less than $1 billion (without regard to any holding company assets). This change will be effective October 1, 2004. It will apply to OTS's CRA examinations beginning in the fourth quarter of 2004. Of course, any small savings association that prefers to be assessed under the lending, investment, and service tests may so elect in accordance with 12 CFR 563e.21(a)(3), if it collects and reports the data required for other savings associations under 12 CFR 563e.42.

This change should reduce the existing CRA examination and reporting burden on the affected savings associations in order for these institutions to be able to dedicate scarce resources to better meet the credit needs of their local communities and in areas requiring continuing vigilance, for example, offsetting the appreciable burden arising from implementation of anti-money laundering (AML) programs, Bank Secrecy Act (BSA) requirements, and other compliance initiatives. This change will permit the additional "small savings associations" to be subject to streamlined CRA examinations that focus on lending as

well as benefiting from reduced data collection and reporting burdens under the CRA. The final rule will not in any manner relieve small savings associations of all other existing and ongoing compliance requirements and legal obligations under the CRA.

OTS is able to use its expertise to make a predictive assessment that this change will reduce unwarranted burden without negatively impacting upon the purpose of CRA to require each Federal banking agency to encourage institutions to help meet the credit needs of local communities in which they are chartered consistent with safe and sound operation. 12 U.S.C. 2901(b). This revision is consistent with the agency's ongoing efforts to identify and reduce regulatory burden, particularly for smaller institutions, where appropriate and feasible.

OTS is also making this change to take into account substantial institution asset growth and consolidation in the bank and thrift industries since the definition was originally adopted. Although the final rule will increase the number of thrift institutions eligible for evaluation under the small institution performance standards, it will not have a significant impact on the portion of combined thrift and bank assets subject to evaluation under the large retail institution performance standards. Around the time the CRA rule was developed and promulgated in 1994–1995, total thrift and bank assets covered by the lending, investment, and service tests for large institutions represented 86.2% of total thrift and bank industry assets, including 87.9% of thrift industry assets. Based on March 31, 2004 Thrift Financial Report data, raising the asset threshold to $1 billion (and eliminating consideration of holding company assets) will result in 86.4% of thrift industry assets being covered by the large institution test. Thus, the overwhelming majority of thrift assets will remain covered by the large institution test, there will be only a slight drop in the percentage of thrift industry assets covered by the large institution test as compared to the percentage when the 1995 rule was developed and promulgated, and the change will bring the percentage of thrift assets covered by the large institution test in line with the 1994 combined thrift and bank industry average. The dollar value of thrift assets covered by the large institution test will increase substantially compared to when the rule was promulgated, from approximately $678.3 billion in 1995 to $1 trillion.

Further, the total number of thrifts and the total dollar value of thrift assets, as a percentage of the combined bank and thrift industries, has dropped since 1995. Whereas in December 1995, OTS-regulated thrifts accounted for 12% of the number of thrifts and banks and 14.4% of total thrift and bank industry assets, by March 2004 OTS-regulated thrifts accounted for 10.1% of the number of thrifts and banks and 12.4% of total thrift and bank industry assets. Thus, the impact of the change on the combined bank and thrift industries will be minimal. Of course, the impact on the bank and thrift industries as a whole would increase to the extent the other banking agencies follow suit.

The regulatory burden reduction for small savings associations, however, will be significant. Thrifts remain home mortgage lenders, in part, because unlike banks, they must have at least 65% of their assets in the form of what are generally mortgages or mortgage-related loans in order to avoid the adverse consequences of failing to meet the qualified thrift lender test under the Home Owners' Loan Act (HOLA). 12 U.S.C. 1467a(m). Thrifts are also subject to HOLA lending and investment limits, including limits on commercial loans and community development investments. 12 U.S.C. 1464(c)(2)(A) and (c)(3)(A); 12 CFR 560.30. Small institutions often do not engage in significant amounts of small business or small farm lending.

According to the FRB's analysis of 2003 CRA data for the Federal Financial Institutions Examination Council (FFIEC), thrifts accounted for approximately 21.9% (by number of loans) and 7.9% (by amount of loans) of the small business loans originated or purchased reported by all banks and thrifts combined. A closer look reveals that thrifts under $1 billion in assets contributed only about 0.5% of the total (by number of loans) and 2.2% of the total (by amount of loans), while thrifts over $1 billion in assets contributed about 21.4% of the total (by number of loans) and 5.7% of the total (by amount of loans). Similarly, thrifts only accounted for approximately 11.3% (by number of loans) and 3.6% (by amount of loans) of the small farm loans originated or purchased reported by all banks and thrifts combined in 2003. Thrifts under $1 billion in assets contributed about 1.2% of the total (by number of loans) and 1.5% of the total (by amount of loans) while thrifts over $1 billion in assets contributed about 10.1% of the total (by number of loans) and 2.1% of the total (by amount of loans). See Table 4–2, "Savings Association Lending by Asset Size," CRA National Aggregate Reports, available at *http://www.ffiec.gov/webcraad/cranaag.htm*.

This pattern of lending by savings associations under $1 billion in assets has remained fairly constant over the years. It demonstrates that thrifts, in the main, make mortgage-related loans that are reported under HMDA. By raising the asset threshold, the burden associated with reporting requirements for loans that constitute a minor part of the overall business of small thrifts will be relieved without significant impact to the CRA data collection as a whole and the benefits derived from such data.

Moreover, OTS's examination experience since implementing the current CRA regulations indicates that there is not a significant change in the way that smaller institutions meet their CRA obligations once they cross the $250 million threshold. Institutions between $250 million and $1 billion tend to continue to meet the credit needs of their communities by making loans in their assessment areas. We have no belief that institutions impacted by this regulatory change will alter their lending habits. Institutions under $1 billion in assets generally do not have the financial capacity to hire specialized staff, engage in significant investments, or open new branches. Indeed, an interagency Q&A on CRA has previously recognized that factors outside of an institution's control may prevent it from engaging in certain activities. It provides, "Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record." Q&A 21(b)(4), 66 FR 36620, 36631 (July 12, 2001). Accordingly, the lending focus under the small savings association performance standards is particularly well tailored to evaluating the performance of thrifts with under $1 billion in assets.

Far from being an exemption from CRA requirements, the small savings association performance standards provide for OTS to evaluate the record of a small savings association in meeting the credit needs of its assessment area under particular lending-focused criteria. Those criteria, enumerated in OTS's regulation at 12 CFR 563e.26 are:

(1) The savings association's loan-to-deposit ratio, adjusted for seasonal variations and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary

markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the savings association's assessment area(s);

(3) The savings association's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the savings association's loans; and

(5) The savings association's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

As discussed in Appendix A to OTS's CRA rule (12 CFR Part 563e, App. A), savings associations evaluated under the small savings association performance standards will only receive a "satisfactory" performance evaluation if, in general, the savings association demonstrates:

(1) A reasonable loan-to-deposit ratio (considering seasonal variations) given the savings association's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(2) A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);

(3) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the savings association's assessment area(s);

(4) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the savings association's performance in helping to meet the credit needs of its assessment area(s); and

(5) A reasonable geographic distribution of loans given the savings association's assessment area(s).

As further discussed in Appendix A, a savings association that meets each of the standards for a "satisfactory" rating and exceeds some or all of those standards may be considered for an overall rating of "outstanding." In assessing whether a savings association's performance is "outstanding," OTS considers the extent to which the savings association exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

In contrast, a savings association may receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

The interagency CRA Qs&As elaborate further. One Q&A states, "Examiners can consider 'lending-related activities,' including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution test." Q&A 26(a)–1, 66 FR at 36637. Another Q&A states that examiners will consider these types of lending-related activities "when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating" or "at an institution's request." Q&A 26(a)–2, 66 FR at 36637. Still another asks, "Under the small institution performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?" The answer provided is that the "small institution performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investment for the purposes of determining whether the small institution receives a satisfactory CRA rating." Q&A 26(a)–5, 66 FR at 36637.

Thus, under OTS CRA regulations, as further interpreted in the interagency Qs&As, OTS already considers, and will continue to consider, a small savings association's performance in making community development loans and qualified investments and providing community development services, at the savings association's request, for purposes of raising a rating. While community development activities are not required for small savings associations, information a savings association provides about its community development activities may impact a rating. For example, a savings association that might otherwise be rated "satisfactory" may be rated "outstanding," or a savings association that might otherwise be rated less than "satisfactory" may be rated "satisfactory" depending on its performance in a variety of community development activities.

Therefore, even though the asset threshold is being raised, all small savings associations would continue to have an incentive to perform community development activities to improve their CRA rating. In particular, savings associations with between $250 million and $1 billion in assets that may already have significant commitments to make qualified investments and perform community development services, though now recategorized as "small," will continue to have incentives to perform a range of community development activities. Those activities can be fully considered during their examination.

Application to Savings Associations Only

This final rule only applies to OTS-regulated savings associations. The change to the small institution asset threshold would not affect entities regulated by the OCC, FDIC, or the FRB. OTS is aware that section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) directs the banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. While uniformity is the ultimate goal of section 303, the statute recognizes that the results of these efforts must be "consistent with the principles of safety and soundness, statutory law and policy and the public interest." The uniformity required by section 303, for example, is not intended to result in unreasonable or unwarranted requirements that add to burden. S. Rep. 103–169, at 48 (1993), reprinted in 1994 U.S.C.C.A.N. 1881.

Consequently, the four Federal banking agencies have occasionally imposed or retained non-uniform regulatory requirements based on different conclusions regarding safety and soundness, and other policy and public interest considerations. See, *e.g.*, Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies; Report to Congress, 69 FR 8523 (February 24, 2004). Where there are different interpretations of common statutes, the banking agencies are encouraged to highlight and explain the differences, so that users will have clear notice of any areas of difference among regulations or guidelines relating to a common statutory scheme or supervisory concern. S. Rep. 103–169, at 48 (1993), reprinted in 1994 U.S.C.C.A.N. 1881.

Other Issues

OTS is withdrawing the remaining portions of its proposed rule.

Credit Terms and Practices

The NPR proposed adding regulatory text providing that evidence that an institution or affiliate engages in discriminatory, illegal, or abusive credit practices would adversely affect the evaluation of the institution's CRA performance. Under the proposal, evidence pertaining to the institution's loans would be considered, regardless of their location, while evidence pertaining to an affiliate's loans would only be considered if the lending was by an affiliate with loans considered under the lending test and occurred in the institution's assessment area. Examples of discriminatory or illegal practices the proposal identified were: (1) Discriminating, such as Equal Credit Opportunity Act (ECOA) or Fair Housing Act violations; (2) violating the Home Ownership and Equity Protection Act (HOEPA); (3) violating section 5 of the Federal Trade Commission Act (FTC Act); (4) violating section 8 of the Real Estate Settlement Procedures Act (RESPA); and (5) violating the right of rescission under the Truth in Lending Act (TILA). Equity stripping was the only other practice listed, which the proposal defined as engaging in a pattern or practice of lending based predominantly on the foreclosure or liquidation value of the collateral in connection with home mortgage and secured consumer loans. The justification for the proposed change was to better address abusive lending practices in CRA evaluations.

Commenters were united in their opposition to this portion of the proposal. The main argument against it expressed by Financial Institution Commenters was that CRA should not consider compliance with other statutes that are already covered in compliance examinations, such as the ECOA, the Fair Housing Act, the FTC Act, HOEPA, RESPA, and TILA, since that approach would be repetitive and create unnecessary complexity. Others suggested that a predatory lending component should be focused on patterns of prohibited, predatory or abusive conduct. A further comment was to urge the banking agencies not to penalize institutions for practices just because the banking agencies may regard them as abusive or predatory if those practices are not illegal.

Consumer Commenters opposed the proposed predatory lending standard, expressing concern that it could protect predatory lenders by its omissions. Several commenters went out of their way to state very specifically and clearly that they would prefer no change to the rule with regard to predatory lending to finalizing the proposed standard. Many comments harshly criticized the proposed standard for not covering enough types of predatory conduct. Many commenters specifically listed fee packing, high prepayment penalties, flipping, and mandatory arbitration, as among the additional abuses that the standard should also address. Other commenters listed some additional practices such as targeting minorities, low-income people, and the elderly for subprime lending; originating sub-prime loans for borrowers who could qualify for prime loans; encouraging refinancing of unsecured debt to increase the loan size, points, fees, and commissions; selling single-premium credit insurance products; charging yield spread premiums and other compensation that rewards brokers for steering borrowers to higher cost products and large loans; and purchasing and investing in predatory loans as part of mortgage backed securities.

Even with regard to equity stripping, which the proposal was designed to address, the commenters emphasized that the proposal should not focus solely on lending based on the foreclosure value of the collateral. They pointed out that equity stripping also occurs from excessive fees and unnecessary products and that this type of equity stripping is also abusive, even if it does not lead to delinquency or foreclosure. One large consumer organization added that without conducting file reviews of individual loans, even the one predatory practice identified in the proposed rule would not be discovered. Many Consumer Commenters urged that the anti-predatory lending standard must apply to the financial institution and all of its affiliates, whether inside or outside the assessment area, not just real estate secured loans by the financial institution in its assessment area.

In light of the comments received, OTS is withdrawing this portion of its proposal. OTS's CRA rule will continue to indicate that evidence of discriminatory or other illegal credit practices adversely affects the performance evaluation. 12 CFR 563.28(c). An interagency Q&A on CRA will continue to address what is meant by "discriminatory or other illegal credit practices." Q&A 28(c)–1, 66 FR at 36640. No further action is required at this time.

Enhancement of Disclosure Statements and Public Performance Evaluations

The ANPR also solicited comment on CRA data collection requirements. Specifically, it asked whether the data collection and reporting and public file requirements are effective and efficient approaches for assessing an institution's CRA performance while minimizing burden. The NPR proposed to amend the specifications for the CRA Disclosure Statements that each banking agency prepares annually for each institution that is reporting data. The revised statements would include as additional data items the number and amount of small business and small farm loans by census tract. The justification was to enhance the data disclosed to the public. The preamble to the NPR further indicated that the banking agencies would begin using publicly available HMDA and CRA data to disclose additional information in the public CRA performance evaluations. The following additional data would be disclosed by assessment area: (1) The number, type, and amount of purchased loans; (2) the number, type, and amount of HOEPA loans and loans for which the rate spread information is reported under HMDA; and (3) the number, type, and amount of loans that were originated or purchased by an affiliate and included in the institution's evaluation, as well as the identity of the affiliate. The justification was to make it easier for the public to evaluate lending by individual institutions.

Relatively few Financial Institution Commenters addressed these data issues and those that did reflected no strong consensus. Several commented on distinguishing loan purchases from originations in the public evaluation. More opposed than favored such an approach. The main argument against drawing the distinction was that such a move could suggest that purchases are not as beneficial as originations—a suggestion disputed by these commenters—and that the distinction would be purely technical. Similarly, several commented on distinguishing HOEPA loans from other loans in the public evaluation. More opposed than favored that approach as well. The main argument against was that HOEPA loans are not necessarily predatory but that such an implication could be drawn from making this distinction in the public evaluation. One large trade organization opposed revising the CRA Disclosure Statements to include the number and amount of small business and small farm loans by census tract. It argued that the privacy of the financial information of borrowers at many small, mostly rural institutions would be breached because many of these institutions have only one or two business borrowers in some census tracts.

The Consumer Commenters, however, supported the enhanced data disclosure

the banking agencies proposed for the public portion of the CRA report. They specifically voiced support for disclosure of the specific census tract location of small business loans, distinguishing purchases from loan originations, and disclosing high cost loans. However, they were unequivocal that the potential beneficial effects of this aspect of the proposal were outweighed by the harm from other aspects of the proposal. Many of these commenters further argued that the banking agencies should not merely report the new data on CRA examinations, but should use the new data to provide less favorable weight on CRA examinations to high cost loans and loan purchases than to prime loans and loan originations.

In light of the comments received, OTS is also withdrawing this portion of its proposal. OTS believes that the data disclosure changes would add to burden without providing corresponding benefits.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OTS may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is currently approved under OMB Control Number 1550–0012. OTS is giving notice that, with this final rule, the changed collection of information has been submitted to OMB for review and approval.

Title of Proposal: Community Reinvestment—12 CFR Part 563e.

Frequency of Response: Annual.

Affected Public: Savings associations.

Abstract: This final rule revises the definition of "small savings association" under OTS's CRA regulations. Under the final rule, "small savings association" is defined as a savings association with total assets of less than $1 billion, without regard to any holding company assets. This change permits additional small savings associations to be subject to streamlined examinations as well as reduced data collection and reporting burdens under the CRA.

Estimated Number of Respondents: 923.

Estimated Burden Hours per Response: Small business and small farm loan register, 219 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Estimated Total Burden: 80,998 hours.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that since this final rule will reduce burden and will not raise costs for small institutions, it will not have a significant economic impact on a substantial number of small entities. It does not impose any additional paperwork or regulatory reporting requirements. It will increase only slightly the overall number of small savings associations, as defined for Regulatory Flexibility Act purposes ($150 million in assets or less), that will qualify for the reduced data collection requirements in 12 CFR Part 563e applicable to small savings associations.

The Small Business Administration submitted comments on the NPR requesting further information to support the conclusion of no significant impact. In response, OTS has calculated that, based on March 31, 2004 data, there were 477 savings associations with $150 million in assets or less, representing 51.8% of all thrifts, $33.7 billion in assets, and 2.9% of thrift industry assets. Only 30 of these institutions—representing 3.3% of all thrifts, $1.5 billion in assets, and 0.1% of thrift industry assets—failed to qualify for the small savings association test because they were part of a holding company with over $1 billion in assets and will now qualify as "small" under the revised definition. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866 Determination

OTS has determined that this rulemaking is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement nor specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Office of Thrift Supervision

12 CFR Chapter V

■ For the reasons outlined in the preamble, the Office of Thrift Supervision amends part 563e of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 563e—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. Revise § 563e.12(t) to read as follows:

§ 563e.12 Definitions.

* * * * *

(t) *Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had total assets of less than $1 billion.

* * * * *

Dated: August 12, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–18863 Filed 8–17–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2001–11133; Amendment No. 91–282]

RIN 2120–AH19

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an inadvertent error in a final regulation published in the **Federal Register** of Tuesday, July 27, 2004 (69 FR 44772). The regulation related to the certification of aircraft and airmen for the operation of light-sport aircraft. The correction is to the section concerning aircraft having experimental certificates: Operating limitations.

DATES: The regulation is effective September 4, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Gardner, Flight Standards Service, General Aviation and Commercial Division (AFS–800), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone 907–271–2034, or 202–267–8212.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–16577 appearing on page 44772 in the **Federal Register** of Tuesday, July 27, 2004, make the following correction:

§ 91.319 [Corrected]

■ On page 44881, in the first column, amendment number 64, "Amend § 91.319 by redesignating paragraph (e) as paragraph (h) and adding new paragraphs (e), (f), and (g) to read as follows:" is corrected to read "Amend § 91.319 by redesignating paragraph (e) as paragraph (i) and adding new paragraphs (e), (f), (g), and (h) to read as follows:".

Issued in Washington, DC, on August 12, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–18904 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. 2000N–1399]

Presubmission Conferences

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule to amend its new animal drug regulations to implement a new provision of the Federal Food, Drug, and Cosmetic Act (the act). Under this new provision of the act, as amended by the Animal Drug Availability Act of 1996 (ADAA), any person intending to file a new animal drug application (NADA) or supplemental NADA or to investigate a new animal drug is entitled to one or more conferences with FDA to reach an agreement establishing a submission or investigational requirement. This final rule describes the procedures for requesting, conducting, and documenting such presubmission conferences.

DATES: This rule is effective November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Gail Schmerfeld, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1796, e-mail: *gschmer1@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the ADAA on October 9, 1996. Section 512(b)(3) of the act (21 U.S.C. 360b(b)(3)), as amended by the ADAA, provides that any person intending to file an NADA or supplemental NADA or to request an investigational exemption is entitled to one or more conferences with FDA prior to such submission to reach an agreement establishing a submission or investigational requirement. In the **Federal Register** of August 25, 2000 (65 FR 51782), we proposed amending the new animal drug applications regulations in part 514 (21 CFR part 514) to describe the procedures to be followed for requesting, conducting, and documenting presubmission conferences. Under the proposed rule and final rule, persons intending to file an abbreviated new animal drug application (ANADA) as well as persons intending to file an NADA or supplemental NADA are entitled to request presubmission conferences. FDA provided 75 days for public comment on the proposed rule.

II. Comments on the Proposed Rule

We received four letters from government, industry, and trade associations commenting on the proposed presubmission conference rule. Our response to the comments, grouped by codified section, follows.

A. General Comments

(Comment 1) Two comments assert that presubmission conferences under section 512(b)(3) of the act represent a fundamental change in the manner the agency is to operate and a new way for the agency to do business.

(Response) FDA disagrees with these comments. Presubmission conferences under 512(b)(3) of the act do not represent a fundamental change in the manner we operate. Although there was no statutory or regulatory entitlement to a presubmission conference prior to enactment of the ADAA, FDA's Center for Veterinary Medicine (CVM) had already been encouraging sponsors of NADAs to participate in conferences with us to discuss in detail what studies would be necessary to demonstrate the safety and effectiveness of particular new animal drugs being investigated. We found, as a result of this direct communication during the development and review of new animal drugs, that fewer unusable studies were conducted and there were fewer delays in the review process. Although such agreements were not legally binding, we attempted to be sensitive to industry's concern that we not change such requirements without justification. Our goal was to not change requirements unless we became aware of new information that suggested such requirements may no longer support approval.

B. Definitions (§ 514.3)

In the proposed rule, the preamble discusses definitions in proposed § 514.3. However, the *Definitions* section in the codified text in the proposed rule was mistakenly numbered § 514.2. The definitions added by this final rule will be added to existing § 514.3 *Definitions* in alphabetical order.

In the proposed rule, *potential applicant* was defined to mean any person intending to: (1) Investigate a new animal drug under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act), (2) file a new animal drug application (NADA) or supplemental NADA under 512(b)(1) of the act, or (3) file an abbreviated new animal drug

application (ANADA) under section 512(b)(2) of the act. Under § 514.5(c), a potential applicant may request one or more presubmission conferences prior to the filing of a NADA, supplemental NADA, or an ANADA. Thus, a person investigating a new animal drug under section 512(j) of the act is also a potential applicant. We are revising the definition of "*potential applicant*" to include "any person investigating a new animal drug under section 512(j)."

In the proposed rule, the last sentence in the definition of *presubmission conference* agreement stated that "The presubmission conference will be binding on the potential applicant and FDA unless it is modified as described in § 514.4(g)." We are deleting this sentence because it is unnecessary. As defined in the proposed and final rule, a presubmission conference is binding.

(Comment 2) One comment expresses concern that the discussion in the preamble to the proposed rule appeared to limit presubmission conferences to just safety or effectiveness data generation.

(Response) The specific statement that raised the concern appeared in the second section entitled "Description of the Proposed Rule," "* * *. Meetings in which the focus is other than to establish the safety and effectiveness data requirement for new animal drugs (e.g.,* * *) are not specifically covered by this proposed rule" (65 FR 51782 at 51783).

We did not intend that statement to be read to limit which meetings will be considered presubmission conferences. Most, if not all, investigational and submission requirements relate to establishing safety or effectiveness data requirements.

The key factor in determining whether a meeting is a presubmission conference is, as implied in section 512(b) of the act and the definition of *presubmission conference* in § 514.3(b), whether such meeting is "* * * to reach a binding agreement establishing a submission or investigational requirement." Generally, the goal of a presubmission conference is to reach agreement on some or all of the investigational or submission requirements for a particular new animal drug. But, so long as the intent of a meeting is to discuss investigational or submission requirements, it is a presubmission conference even if the parties are unable to reach agreement.

However, there may be some meetings that are not related to the establishment of investigational or submission requirements that will not be covered by this regulation because they are not presubmission conferences. For example, a meeting requested by a company to present information about all of its ongoing research and development projects would not be a presubmission conference. Furthermore, a meeting to discuss a pending submission would not be a presubmission conference. As the term "presubmission" implies, submission requirements should be discussed before we receive a submission. Meetings to discuss pending submissions could give potential applicants an unfair advantage because they could have the effect of requiring the review of the submission prior to the meeting, thus pushing the review up in the queue. Therefore, we neither anticipate meeting with potential applicants to discuss pending submissions, nor would any such meeting fall within 512(b)(3) of the act or this rule.

The proposed definition of *presubmission conference* limits *presubmission conferences* to conferences "requested by the potential applicant." The act provides that any potential applicant is entitled to a presubmission conference. However, the act does not specify that requests for presubmission conferences may be initiated only by potential applicants. Thus, we are revising the definition of *presubmission conference* to remove this restriction. While, typically, potential applicants will initiate requests for meetings to discuss investigational or submission requirements, FDA may encourage potential applicants to request a presubmission conference if we believe such a meeting may facilitate the development of data to support approval.

(Comment 3) One comment expresses concern that the binding nature of presubmission conferences results in a process that appears to be somewhat inflexible. The comment notes that a new animal drug (i.e., the formulation) or its proposed uses (i.e., the intended uses or conditions of use) may change as the product is developed and was concerned that data requirements may change in the time it takes FDA to draft and clear the presubmission conference agreement.

(Response) The act requires that agreements reached in presubmission conferences be binding. However, the act also provides flexibility by allowing for changes to such agreements if FDA and the applicant or requester mutually agree to modify the requirement, or if FDA determines that a substantiated scientific requirement essential to the determination of safety or effectiveness of the animal drug involved appears after the conference. Thus, although the parties may agree to modify a presubmission conference agreement, FDA cannot unilaterally change the agreement unless there are valid scientific reasons for doing so.

To ensure that investigational and submission requirements do not become outdated before a presubmission conference agreement is sent to a potential applicant, we are revising § 514.5(f)(1) in the final regulation (as described in the following paragraphs) to add a timeframe in which we will send a copy of the memorandum of conference, which includes any presubmission conference agreement, to the potential applicant to review.

(Comment 4) One comment requests that the regulations make it absolutely clear that the sponsor should be able to determine, with certainty, through a presubmission conference all the studies necessary to establish the human safety, animal safety, and efficacy of a new animal drug. Another comment expresses concern that the regulation describes a process that appears to be somewhat inflexible because, among other things, it requires us to establish investigational or submission requirements for new animal drugs that may change (e.g., in formulation, intended uses, and conditions of use) based on information gathered throughout their development.

(Response) The act and this final regulation provide both certainty and flexibility in determining investigational or submission requirements. First, the act and the regulation specifically state that any person intending to file a NADA or a request for investigational exemption is entitled to one or more conferences in order to reach agreement on certain submission requirements (section 512(b)(3) of the act and § 514.5(b)). Second, the act and the regulation specify that an agreement may be changed if the following conditions are met: (1) FDA and the applicant or requester mutually agree to modify the requirement or (2) FDA by written order determines that a substantiated scientific requirement essential to the determination of safety or effectiveness of the animal drug involved has appeared after the conference (section 512(b)(3) of the act and § 514.5(g)). Thus, the presubmission conference process provides certainty absent unforeseen circumstances, but provides means to address contingencies that may arise during new animal drug development.

The provision entitling a potential applicant to one or more presubmission conferences is intended to recognize that it may not be possible to establish

all of the investigational or submission requirements in one presubmission conference because the new animal drug or its proposed uses may change as it is being developed. The statute and regulation do not preclude the parties from reaching agreement regarding all the studies necessary to establish the human safety, animal safety, and effectiveness of a new animal drug in a single presubmission conference. However, we believe it is more likely that for most new animal drugs the parties will participate in a series of presubmission conferences.

Potential applicants may choose to and are encouraged to request more than one presubmission conference. For example, if the outcome of one study required to satisfy one of the approval requirements is likely to affect the number or types of additional studies that would be needed to satisfy the same or a different approval requirement, or if it may affect the formulation or proposed uses of the new animal drug. By sequencing presubmission conferences, a potential applicant may be able to avoid conducting studies that will not support or be necessary for approval.

Potential applicants should consider requesting presubmission conferences on specific, manageable issues and should include in the advance material to us all relevant information and data available to date. Potential applicants should also consider the sequencing of such conferences so that information and data on which future requirements may depend are available. For example, a potential applicant may request one presubmission conference to discuss the number and types of studies necessary to demonstrate safety and request another presubmission conference to discuss studies necessary to demonstrate effectiveness after they have conducted studies to demonstrate that a particular dose or dosage range is safe.

C. General (§ 514.5(a))

We are renaming this section "General Principle Underlying the Conduct of a Presubmission Conference." We are deleting the first two sentences of proposed § 514.5(a). Although these sentences accurately reflect our view that a presubmission conference is the forum for a potential applicant and FDA to reach agreement regarding investigational or submission requirements and that the goal of such a conference is to enhance the animal drug development and evaluation process, these sentences do not set forth requirements or expectations and should not be included in the codified language.

We are keeping the last sentence, but changing it to read as follows: "The general principle underlying the conduct of any presubmission conference is that there should be candid, full, and open communication." We believe it is important that all participants to a presubmission conference, potential applicants and FDA representatives alike, understand that candid, full, and open communication is essential to ensuring that such conferences will enhance the animal drug development and evaluation process.

D. Requesting a Presubmission Conference (§ 514.5(b))

We are revising the second sentence of proposed § 514.5(b) to read more clearly: "A potential applicant's request for a presubmission conference must be submitted to FDA in a signed letter." If an investigational new animal drug file has not been established prior to receiving a request for a presubmission conference, our general practice is to establish an investigational new animal drug file for administrative reasons such as recordkeeping and protecting the confidentiality of information submitted by potential applicants.

E. Advance Information (§ 514.5(d))

We are revising proposed § 514.5(d), among other things, to clarify what information is required to be submitted to FDA in advance of a presubmission conference. Proposed § 514.5(d) specified that:

> The potential applicant must provide to FDA, at least 30 days before a scheduled presubmission conference, a copy of any materials to be presented at the conference, a list of proposed indications or a copy of the proposed labeling for the product under consideration, and any background material that provides an adequate scientific rationale to support the potential applicant's position on issues listed on the proposed agenda for the conference.

Under § 514.5(b), a potential applicant is required to provide a proposed agenda with their request for a presubmission conference. We are revising § 514.5(d) to clarify that a potential applicant is required to submit a detailed agenda as part of the advance materials submitted to FDA at least 30 calendar days before the scheduled meeting. We expect that many potential applicants will schedule presubmission conferences more than 30 days before the date they want to meet with FDA so that they can increase the likelihood that the appropriate staff representing the potential applicant and FDA will be available to meet on a particular date or within a particular timeframe. If the agenda is drafted at the time the meeting is requested, the potential applicants may not be able to provide the detail and focus for each of the agenda items at the level that is needed for reviewers to prepare for the presubmission conference. The proposed agenda submitted at the time of the request should identify the general areas of discussion and provide enough information to allow us to evaluate who from FDA should attend the meeting. But, we also need a detailed agenda at least 30 days before the presubmission conference is scheduled so that attendees can prepare for a productive discussion of the issues.

What constitutes a "detailed agenda" will depend on the purpose of the presubmission conference. The question the potential applicant should ask in preparing a detailed agenda is "what information is necessary for a full and productive discussion on the issues identified in the agenda?" Consistent with this revision, we are removing the word "proposed" that appears before agenda at the end of the first sentence in proposed § 514.5(d).

Proposed § 514.5(d) also required the potential applicant to provide to FDA "* * * a list of proposed indications or a copy of the proposed labeling for the product under consideration* * *." We are revising § 514.5(d) to require submission of a list of proposed indications and also to require a copy of proposed labeling, if available.

We encourage potential applicants to develop proposed labeling early in the drug development process. By proposed labeling we mean that textual portion of the label that describes, among other things, the new animal drug, dosage form, route of administration, and the intended uses and conditions of use for the new animal drug at a level of specificity appropriate to the stage of development. Because this wording often drives the submission or investigational requirements, proposed label would assist us in establishing appropriate requirements.

Finally, we are adding the words "a copy of" and deleting the word "adequate" to clarify that a potential applicant is required to provide "a copy of any background material that provides scientific rationale to support the applicant's position on issues listed in the agenda for the conference." We do not need originals of the background material. Readable copies may be provided in lieu of originals. The background material should provide a scientific rationale for the applicant's position on issues listed in the detailed agenda. We will determine after review

and discussion at the presubmission conference whether the materials provide "adequate" scientific rationale to support such positions.

(Comment 5) One comment states that, based on their experience with FDA, if the amount of advance information requested in the proposed rule is provided, there may be little opportunity for dialog or need for the meeting because the agency will have made its decisions prior to the actual meeting. Two comments suggest rather than requiring all information to be submitted prior to the meeting, providing background materials to acquaint participants with information that will be discussed should be sufficient.

(Response) The goal of a presubmission conference is to reach agreement regarding some or all of the investigational or submission requirements. If we are to be prepared for a meeting, and prepared to make binding decisions at such a meeting, sufficient scientific background materials must be provided in advance for our review and consideration. That does not mean that we will not be open to discussion. In fact, having the material in advance will allow our participants to prepare for a productive discussion because they will be able to formulate appropriate questions, conduct further research on issues, and apply their review experience, as appropriate.

It should be easier for potential applicants to provide copies of all material they evaluated or referenced relating to an issue listed in the agenda, rather than selecting or summarizing relevant material. FDA participants should have the opportunity to review all documentation in order to exercise their scientific judgment and, in many cases, years of experience reviewing new animal drugs to determine what information is relevant. If potential applicants select what information is submitted or not submitted, FDA participants may not have all the materials needed to make the decision or to provide the best advice to the potential applicants regarding the least burdensome investigational or submission requirements that are likely to result in approval.

(Comment 6) One comment believes there should be a mechanism for FDA to ask the applicant questions or request additional information via telephone call or e-mail, rather than delay the meeting. The comment hopes delays in holding a presubmission conference will be the exception, not the norm.

(Response) Nothing in this rule prevents FDA staff from contacting a potential applicant to ask clarifying questions or to request minor (i.e., nonvoluminous, noncomplex) additional information. If questions can be answered and minor additional materials can be provided to us in a timely manner prior to the presubmission conference, there would be no need to postpone a meeting.

The advance materials must permit a productive discussion of the issues, and if we are to reach a binding agreement with a potential applicant, sufficient information on which to make an informed decision. Whether and how often presubmission conferences are delayed will depend in part upon the quality and completeness of the advance materials submitted by the potential applicant.

We are revising the last sentence in proposed § 514.5(d) to clarify that: "* * * FDA may elect to postpone part or all of the meeting until sufficient materials are provided to FDA." If sufficient materials are available to proceed with a productive discussion on some issues but not others, we intend to meet with the potential applicant to discuss those issues for which sufficient advance materials have been provided, if the issues are severable. Our goal is to assist potential applicants in moving forward with the development and approval of new animal drugs.

F. Conduct of a Presubmission Conference (§ 514.5(e))

We are revising the last sentence of proposed § 514.5(e) to clarify that: "The submission or investigational requirement may include, among other things, the number, types, and general design of studies that are necessary to demonstrate the safety and effectiveness of a new animal drug." We are changing "will" to "may" because any particular submission or investigational requirement may include the number, types, general design, or some combination of these elements, of studies that are required to demonstrate safety and effectiveness, but not all of them. We are adding the phrase "among other things" because requirements may address issues other than number, type, or general design of studies, e.g., labeling requirements or methods validation. The first sentence of proposed § 514.5(a) stated that presubmission conferences provide a forum to discuss the objectives and general design of particular studies. Because we are deleting that sentence in the final rule, we are clarifying in final § 514.5(e) that submission or investigational requirements may include the general design of the studies.

G. Documentation of a Presubmission Conference (§ 514.5(f))

We are revising the first sentence in proposed § 514.5(f)(1) to clarify the contents of the memorandum of conference. "FDA will prepare a memorandum for each presubmission conference that will include, among other things: any background information pertinent to the request for the meeting; a summary of the key points of discussion; agreements; and action items and assignments of responsibility." Other changes to § 514.5(f)(1) are described in the responses to comments that follow. Further, we are dividing final § 514.5(f)(1) into paragraphs to improve clarity and readability.

(Comment 7) One comment seems concerned that the presubmission conference agreement is part of the memorandum of conference. Further, the comment suggests that it may be more expeditious and timely for the registrant to prepare the memorandum of understanding with subsequent approval by the agency.

(Response) We note that the comment uses the term "memorandum of understanding." Neither FDA nor potential applicants draft memorandum of understanding to document presubmission conferences. As defined in FDA's Staff Manual Guide 2830.1, the term "Memoranda of Understanding" is primarily used by FDA to refer to formal agreements between FDA and other Government (Federal, State, or local) agencies. We assume that the comment meant "memorandum of conference."

As discussed in the proposed rule, that portion of the memorandum of conference that documents any agreements reached regarding all or part of a submission or investigational requirement will be included under the heading "Presubmission Conference Agreement" (65 FR 51782 at 51783). We believe it is more efficient for us to prepare the memorandum of conference and that it is important to provide the agreement in the context of the information and discussions that took place during the presubmission conference.

We are revising the sentence in proposed § 514.5(f)(1) that read: "If a memorandum is silent on an issue, * * * such silence cannot be construed as agreement between FDA and the potential applicant on the issue" to clarify that it is specifically the presubmission conference agreement section of the memorandum in which silence does not constitute agreement.

This sentence logically follows the sentence explaining that the presubmission conference agreement is a section of the memorandum and will read as follows: "If the presubmission conference agreement section of the memorandum is silent on an issue, including one that was discussed in the conference or addressed by materials provided for the conference, such silence does not constitute agreement between FDA and the potential applicant on the issue."

(Comment 8) The preamble to the proposed rule states that presubmission conference agreements would generally include timeframes for completion. One comment acknowledges that scientific knowledge on which agreements are based may change over long periods of time, but expresses concern that no guidance on the duration of those timeframes was given.

(Response) Presubmission conference agreements will be based on scientific knowledge available at the time of the agreement. The inclusion of timeframes in a presubmission conference agreement is intended, as the comment notes, to recognize that the state of scientific knowledge may change over time. The inclusion of a timeframe signals to a potential applicant or us the need to revisit whether the submission or investigational requirements are still relevant after that time.

What constitutes a reasonable timeframe will vary significantly depending on, among other things, the nature of the product, the species for which the drug is intended, and the proposed uses. For example, time may affect the inferential value of data. Time-dependent factors include, e.g., genetics of the target animal and the target organism, husbandry practices, and diets (62 FR 59830 at 59833, November 5, 1997).

Timeframes and any other caveats should be discussed as part of the process of reaching agreement. Examples of other caveats that might be included in a presubmission conference agreement include specification of the formulation (e.g., final formulation) on which the studies should be conducted and timeframes for updating literature searches.

(Comment 9) All of the comments express concern that the proposed regulation does not include a timeframe in which FDA would issue the memorandum of conference, and thus, the presubmission conference agreement, if one is reached. Most comments suggest that FDA should be required to provide the memorandum of conference to the potential applicant within 25 days of the conference. They state that this timeframe is consistent with the timeframe in which FDA must provide written justification if it is requiring more than one field study to provide substantial evidence of effectiveness. One comment is specifically concerned that in the time it takes for the agreement to clear the agency, the submission or investigational requirements might change.

(Response) We agree that FDA should provide the memorandum of conference to the potential applicant in a timely manner and will provide the memorandum no later than 45 days after the date of the presubmission conference. Accordingly, we are revising the sentence in proposed § 514.5(f)(1) that read: "FDA will provide a copy of the memorandum to the potential applicant for review" to read: "FDA will send a copy of the memorandum to the potential applicant for review no later than 45 calendar days after the date of the conference."

We cannot provide the memorandum in 25 days because it is not a practical timeframe for issuing most memoranda of conference considering all of our other review responsibilities. Further, we expect that many agreements will relate to investigational or submission requirements other than those that relate to effectiveness and will not include a requirement for more than one field study. If we require more than one field study to provide substantial evidence of effectiveness, we will provide our justification for that requirement no later than 25 calendar days after the date of the conference as required by section 512(b)(3) of the act and as described in § 514.5(f)(2).

We are also revising the fourth sentence of proposed § 514.5(f)(1) to clarify that as follows: "The potential applicant will have 30 calendar days from the date a copy of the memorandum of conference is sent to the applicant to request changes to, or clarification of, the substance of the memorandum." For purposes of calculating the timeframe for the potential applicant to respond, the only date of record from which we can calculate the time is the date the memorandum is sent. This sentence will follow the sentence that discusses that silence of a presubmission conference agreement on an issue does not constitute agreement.

We are removing the sentence in proposed § 514.5(f)(1) regarding calculation of the timeframe because this is an administrative matter and need not be addressed by regulation.

(Comment 10) Two comments note that the potential applicant is given 30 days to request changes to or seek clarification of FDA's memorandum of conference, but no timeframe is given in which FDA must respond to the potential applicant's request. One comment proposed that FDA respond within 25 days, another proposed 15 days.

(Response) We will send a response to the potential applicant's request for changes to or clarification of a memorandum of conference no later than 45 calendar days after the date such request is received. If we agree that the memorandum of conference needs to be changed to correct or clarify content, we will prepare an amended memorandum of conference and include a copy of the amended memorandum as part of our response to the potential applicant.

In the final rule, § 514.5(f)(1)(iii) will include a timeframe for FDA to send a response to a potential applicant's request for changes or clarification, and clarify the administrative steps relating to requesting and documenting changes to the presubmission conference agreement. Accordingly, the last three sentences of final § 514.5(f)(1) will read: "If a potential applicant requests changes or clarification, the request must be sent to FDA. If the potential applicant requests changes or clarification, FDA will send the potential applicant a response to their request no later than 45 calendar days after the date of receipt of the request." The last sentence of § 514.5(f)(1)(iv), under the paragraph "Administrative record," will read: "A copy of FDA's original memorandum of conference and, as appropriate, a copy of an amended memorandum to correct or clarify the content of the original memorandum will be made part of the administrative file."

We hope to minimize the need for changes to or clarification of the memorandum by summarizing at the close of each presubmission conference the key points of discussion, agreements, and action items, and the assignments of responsibilities for each of those items. That summary of key points will provide the potential applicant with the first and best opportunity to ensure that the discussions and any agreements reached will be accurately documented in the memorandum of conference. If the potential applicant disagrees with the summary presented at the end of the presubmission conference, the potential applicant should discuss the disagreement with us before the close of the presubmission conference. In the event the potential applicant finds, after reviewing FDA's memorandum of

conference, that correction to or clarification of the memorandum is needed, the potential applicant should request changes to or clarification of the memorandum by submitting a letter. Following the presubmission conference, FDA will only review a request for changes to or clarification of the memorandum that is submitted within 30 calendar days from the date a copy of the memorandum is sent to the applicant. The potential applicant should not request changes to or clarification of the memorandum of conference by submitting the potential applicant's version of the memorandum.

(Comment 11) The act, as amended by the ADAA, requires that FDA justify a requirement for more than one field study to provide substantial evidence of effectiveness. Two comments assert that FDA is attempting to circumvent the intent of the ADAA by indicating that it may require a single study in multiple locations.

The comments assert that the issue of whether a field study conducted at multiple sites using a single protocol is a single study or represents more than one study has long been an area of disagreement between industry and FDA. But, one comment acknowledges it may be true that, for some small animal clinical studies, multiple locations may be necessary to obtain sufficient numbers of patients.

(Response) FDA is not attempting to circumvent the intent of the ADAA. Whether a study conducted at multiple sites following the same protocol is most appropriately considered a single study or multiple studies depends upon the degree of coordination between the sites, the intent of the analysis, whether the data would be pooled to assess statistical significance, and the generalizability of the findings (inferential space). Although ADAA does not require FDA to provide justification for a multilocation field study, FDA has agreed that in the spirit of ADAA it will provide justification of the need for a multilocation field study (substantial evidence final rule at 64 FR 40746 at 40750, July 28, 1999). To that end, proposed § 514.5(f)(2) provided: "If FDA requires one field study to be conducted at multiple locations, FDA will, at the request of the potential applicant, provide written or verbal justification for requiring multiple locations" (64 FR 51786).

If we require more than one field study, we will provide written justification within 25 days of a conference why more than one field study is essential to demonstrate by substantial evidence that the new animal drug is effective. After further consideration FDA has decided that if we require one field study with multiple locations, we will provide both verbal justification for why more than one location is required during the presubmission conference and written justification as part of the memorandum of conference, which must be provided in accordance with this final rule no later than 45 days after the date of the conference. We are revising the last sentence of proposed § 514.5(f)(2) to clarify when and how we will provide justification for requiring multiple locations: "If FDA requires one field study to be conducted at multiple locations, FDA will provide justification for requiring multiple locations verbally during the presubmission conference and in writing as part of the Memorandum of Conference."

The principles governing the number and types of studies necessary to demonstrate by substantial evidence that a new animal drug is effective are addressed in § 514.4(b)(3) and, extensively, in the preambles to the proposed and final rules (62 FR 59830 and 64 FR 40746). The preambles to the proposed and final substantial evidence rule (62 FR 59830 at 59833 and 64 FR 40746 at 40749) further describe the considerations for designing a single adequate and well-controlled study that may demonstrate substantial evidence of effectiveness. A single multilocation study may be an accepted way of evaluating drugs efficiently if it is designed to provide independent substantiation and inferential value. In any instance, presubmission conferences give potential applicants a venue to discuss, among other things, the least burdensome requirements for demonstrating effectiveness.

H. Modification of Presubmission Conference Agreements (§ 514.5(g))

(Comment 12) One comment states that the **Federal Register** document for the proposed rule left §§ 514.4 or 514.5 open for future language that would specify how the presubmission conference agreement could be modified.

(Response) In both the proposed and final rule, the bases for modifying a presubmission conference are found in § 514.5(g). The preamble to the proposed rule stated that proposed § 514.4 describes procedures for requesting, conducting, and documenting a presubmission conference. These procedures were proposed, however, to be codified at § 514.5, not in § 514.4 of the proposed rule. In the final rule, these procedures are codified at § 514.5. Existing § 514.4 further defines substantial evidence.

I. When the Terms of a Presubmission Conference Agreement Are No Longer Binding (§ 514.5(h))

(Comment 13) Two comments believe the provisions in proposed § 514.5(h), when the terms of a presubmission conference are no longer binding, are outside the statutory authority of the agency. The act, as amended by the ADAA, provides that agreements regarding submission or investigation requirements reached at a presubmission conference shall bind the Secretary of Health and Human Services (the Secretary) and the applicant or requester except in two specific situations. The first is by agreement of both parties, and the second is where the Secretary, by written order, determines that a substantiated scientific requirement, essential to the determination of safety or effectiveness of the animal drug involved, has appeared after the conference. The comments assert that the agency does not have the authority to create other mechanisms by which FDA can unilaterally declare presubmission conference agreements not binding.

(Response) We are revising the heading in proposed § 514.5(h), "When the terms of a presubmission conference agreement are no longer binding" to "When the terms of a presubmission conference agreement are not valid." The heading in the proposed regulation did not accurately reflect the content or intent of the provision.

The intent of proposed § 514.5(h) was not to describe additional conditions under which a presubmission conference agreement is no longer binding. The intent of the provision was to emphasize that if presubmission conference agreements are to be meaningful and valid, they must be based on the truthful submission of information and must bind both parties. There cannot be agreement between parties if statements or representations made by one party are materially false, fictitious, or fraudulent. Thus, FDA considers agreements based on untrue statements or misrepresentations of material facts to never have been valid. Further, if a party fails to follow any material term of the agreement, such agreements may become invalid.

We disagree with the comments that assert that the provisions in proposed § 514.5(h) are outside the statutory authority of the agency. As stated by one comment, no one should be untruthful or mislead the agency. In fact it is a crime to knowingly and willfully make an untruthful statement to FDA on matter within its jurisdiction; specifically, 18 U.S.C. 1001(a) provides:

Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United Stated, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than 5 years, or both.

The ADAA does not limit or in any way affect the applicability of the criminal code to potential applicants who provide materially false, fictitious, or fraudulent information to FDA in the course of providing information to facilitate the conduct of a presubmission conference or to support new animal drug approval.

Further, section 701(a) of the act (21 U.S.C. 371(a)) vests in the Secretary the authority to issue regulations for the efficient enforcement of the act. No provision of the ADAA limits or supersedes the authority granted to the Secretary, and FDA by delegation, under section 701(a) of the act. FDA has the authority to make clear the conditions under which agreements were never valid or are no longer valid.

(Comment 14) Two comments are concerned by the provision in the proposed rule that stated: "[a] presubmission conference agreement will no longer be binding * * * if the potential applicant fails to follow any term of the agreement." Both comments believe that it would be inequitable for an entire agreement to be voided if the applicant failed to comply with some nonmaterial portion of the agreement. One comment suggests that each component of the presubmission conference agreement should be judged upon its own merits and that failure to meet one provision of the agreement should not automatically invalidate the whole agreement. The other comment is particularly concerned that failure to meet timeframes provided for in presubmission conference agreements may frequently cause agreements to be invalidated.

(Response) We do not intend to invalidate an entire presubmission conference agreement if the potential applicant fails to follow immaterial term(s) of the agreement and the term(s) of the presubmission conference agreement are severable. Thus, we are adding "material" before the word term in § 514.5(h)(1)(ii). We intend to examine the severability of the terms of a presubmission conference agreement on a case-by-case basis.

For example, a determination of whether a timeframe is a material term of the agreement will be made by FDA on a case-by-case basis. We understand the comment's concern that timeframes included as terms of the presubmission conference agreement may result in invalidation of the presubmission conference agreement. However, we believe that steps have been built into the presubmission conference process to decrease the likelihood that timeframes will present a major obstacle to complying with the terms of the agreement. First, the potential applicant and FDA should discuss and agree to reasonable timeframes during the presubmission conference. Second, we have added timeframes for FDA to provide the memorandum, including the presubmission conference agreement, and our response to any requests for correction or clarification to ensure our timely response to potential applicants. Finally, we anticipate that the recent enactment of the Animal Drug User Fee Act of 2003 will minimize any significant delays that occur within FDA in reviewing submissions that may affect the potential applicant's ability to meet reasonable timeframes in the agreement.

III. Environmental Impact

This final rule clarifies the procedures for requesting, conducting, and documenting presubmission conferences. We have carefully considered the potential environmental impacts of this rule and determined that this action is of a type, as described in 21 CFR 25.30(h), that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

We have examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts and equity). We believe that this final rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866. We have also determined that the rule is not a significant regulatory action as defined by the Executive order and, therefore, is not subject to review under the Executive order. Under the Regulatory Flexibility Act, if a regulation has a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize the impact on small entities. FDA certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required.

Under section 512(b)(3) of the act, as amended by the ADAA, any person intending to file an NADA or supplemental NADA or to investigate a new animal drug is entitled to one or more conferences prior to such submission to reach an agreement establishing a submission or investigational requirement. The purpose of presubmission conferences is to allow a potential applicant and FDA to reach agreement regarding a submission or investigational requirement, including the number and types of studies that are necessary to demonstrate that the new animal drug is safe and effective for its intended uses.

Prior to the enactment of the ADAA, CVM had already been encouraging sponsors of NADAs to participate in conferences with FDA to discuss in detail what studies are necessary to demonstrate the safety and effectiveness of the particular new animal drug being investigated. We found that, as a result of this direct communication during the development and review of new animal drugs, both the drug development and review processes became more efficient. This final rule implements the statutory entitlement to a presubmission conference, and thus, it will ensure that this benefit will continue where potential applicants request a presubmission requirement.

FDA is not able to make a precise estimate of the savings that industry has realized through presubmission conferences, or of any increase in the number of presubmission conferences that may be requested as a result of the statutory entitlement. This final rule describes the procedures for requesting, conducting, and documenting presubmission conferences and secures an avenue of communication between us and the potential applicants through which both can agree on the studies needed for a certain drug, thereby reducing unnecessary studies and review periods.

In the proposed rule, we forecasted a range of savings that may be expected from any decrease in approval time resulting from a potential applicant requesting a presubmission conference. We estimated a straight-line increase of a prospective drug's sales revenues from the application's approval up to $5 million in the 10th year and then deceasing again to zero in the 20th year. Because many new animal drugs attain sales much greater than $5 million, we estimated results in a rather conservative benefit. Assuming pretax profit of 20 percent of sales revenue, we estimated the present value of the profits from a 1- to 6-month decrease in approval time at $20,000 to $120,000 using a 7 percent discount rate. Research costs saved by the firm from not conducting unnecessary studies would be added to this amount. Regardless of the exact reduction in the drug review period, potential applicants would only be expected to request a presubmission conference if they expected the net benefit of the conference to be positive. We also concluded that the proposed rule would not impose any mandatory compliance costs.

We did not receive any comments that challenged our conclusions concerning the benefits or costs of the proposed rule. Further, the modifications made to this final rule would not lead us to change our conclusions concerning the aforementioned costs and benefits of the rule.

Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any regulation that may result in an expenditure by State, local and tribal governments in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is approximately $110 million.

V. Federalism

We have analyzed this final rule in accordance with the principles in Executive Order 13132. We have determined that the final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the final rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement has not been prepared.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Presubmission Conferences

Description: This final rule is intended to implement section 512(b)(3) of the act which entitles any person intending to file an NADA or supplemental NADA or to investigate a new animal drug to request one or more conferences with FDA to reach an agreement establishing a submission or investigational requirement. Prior to the enactment of the section 512(b)(3) of the act, we encouraged sponsors to meet with FDA to discuss the number and types of studies necessary to demonstrate that a new animal drug is safe and effective. We found that these meetings increased the efficiency of the drug development and drug review processes. We are publishing this final rule to describe how to request, conduct, and document a presubmission conference.

Final § 514.5(b) describes the information that must be included in a letter submitted by a potential applicant requesting a presubmission conference, including a proposed agenda and a list of expected participants. Final § 514.5(d) lists the information that must be provided by the potential applicant to FDA at least 30 days prior to a presubmission conference. This information includes a detailed agenda, a copy of any materials to be presented at the conference, a list of proposed indications and, if available, a copy of the proposed labeling for the product under consideration, and a copy of any background material that provides scientific rationale to support the potential applicant's position on issues listed in the agenda for the conference. Final § 514.5(f) discusses the content of the memorandum of conference that will be prepared by FDA and gives the potential applicant an opportunity to seek correction to or clarification of the memorandum.

Description of Respondents: Potential applicants

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
514.4(b)	190	1	190	7	1,330
514.4(d)	190	1	190	123	23,370
514.4(f)	190	1	190	16	3,040
Total Hours					27,740

There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 of this document provides, by relevant section, the estimated burden of requesting, preparing for, and participating in presubmission conferences. The numbers in the chart are based on consultation with several of the major research and development firms that are responsible for the development of new animal drugs. While we estimate that the final regulation will increase the annual paperwork burden associated with the

submission of NADAs, supplemental NADAs, and abbreviated NADAs, and requests for guidance on investigational requirements, we believe this increase will be offset by the resulting efficiencies (e.g., eliminating the conduct of studies that are not needed to support approval, decreasing requests from reviewers for additional or clarifying information during the review process).

The information collection provisions of this final rule have been submitted to OMB for review.

Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e, 381.

■ 2. Section 514.3 is amended by adding the following definitions in alphabetical order:

§ 514.3 Definitions.

* * * * *

Potential applicant means any person:

(1) Intending to investigate a new animal drug under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act),

(2) Investigating a new animal drug under section 512(j) of the act,

(3) Intending to file a new animal drug application (NADA) or supplemental NADA under section 512(b)(1) of the act, or

(4) Intending to file an abbreviated new animal drug application (ANADA) under section 512(b)(2) of the act.

Presubmission conference means one or more conferences between a potential applicant and FDA to reach a binding agreement establishing a submission or investigational requirement.

Presubmission conference agreement means that section of the memorandum of conference headed "Presubmission Conference Agreement" that records any agreement on the submission or investigational requirement reached by a potential applicant and FDA during the presubmission conference.

* * * * *

■ 3. Section 514.5 is added to subpart A to read as follows:

§ 514.5 Presubmission conferences.

(a) *General principle underlying the conduct of a presubmission conference.* The general principle underlying the conduct of any presubmission conference is that there should be candid, full, and open communication.

(b) *Requesting a presubmission conference.* A potential applicant is entitled to one or more conferences prior to the submission of an NADA, supplemental NADA, or an ANADA to reach an agreement establishing part or all of a submission or investigational requirement. A potential applicant's request for a presubmission conference must be submitted to FDA in a signed letter. The letter must include a proposed agenda that clearly outlines the scope, purpose, and objectives of the presubmission conference and must list the names and positions of the representatives who are expected to attend the presubmission conference on behalf of the applicant.

(c) *Timing.* A potential applicant may request one or more presubmission conferences at any time prior to the filing of a NADA, supplemental NADA, or an ANADA. A request for a presubmission conference must be received by FDA at least 30 calendar days in advance of the requested conference date. FDA will schedule the presubmission conference at a time agreeable to both FDA and the potential applicant.

(d) *Advance information.* The potential applicant must provide to FDA, at least 30 calendar days before a scheduled presubmission conference, a detailed agenda, a copy of any materials to be presented at the conference, a list of proposed indications and, if available, a copy of the proposed labeling for the product under consideration, and copies of materials evaluated or referenced relative to issues listed in the agenda for the conference. If the materials are not provided or are not sufficient to provide the basis for meaningful discussion, FDA may elect to postpone part or all of the meeting until sufficient materials are provided to FDA.

(e) *Conduct of a presubmission conference.* The potential applicant and FDA may each bring consultants to the presubmission conference. The presubmission conference(s) will be directed primarily at establishing agreement between FDA and the potential applicant regarding a submission or investigational requirement. The submission or investigational requirement may include, among other things, the number, types, and general design of studies that are necessary to demonstrate the safety and effectiveness of a new animal drug for the intended uses and conditions of use prescribed, recommended, or suggested in the proposed labeling for the new animal drug.

(f) *Documentation of a presubmission conference*—(1) *Memorandum of conference*—(i) *Preparation.* FDA will prepare a memorandum for each presubmission conference that will include, among other things, any background pertinent to the request for meeting; a summary of the key points of discussion; agreements; and action items and assignments of responsibility. That portion of the memorandum of conference that documents any agreements reached regarding all or part of a submission or investigational requirement will be included under the heading "Presubmission Conference Agreement." If the presubmission conference agreement section of the memorandum is silent on an issue, including one that was discussed in the conference or addressed by materials provided for the conference, such silence does not constitute agreement between FDA and the potential applicant on the issue.

(ii) *Sending a copy to the potential applicant.* FDA will send a copy of the memorandum to the potential applicant for review no later than 45 calendar days after the date of the conference

(iii) *Requests for changes or clarification.* If a potential applicant requests changes to, or clarification of, the substance of the memorandum, the request must be sent to FDA within 30 calendar days from the date a copy of the memorandum is sent to the applicant. If the potential applicant requests changes or clarification, FDA will send the potential applicant a response to their request no later than 45 calendar days after the date of receipt of the request.

(iv) *Administrative record.* A copy of FDA's original memorandum of conference and, as appropriate, a copy of an amended memorandum to correct or clarify the content of the original

memorandum will be made part of the administrative file.

(2) *Field studies.* If FDA requires more than one field study to establish by substantial evidence that the new animal drug is effective for its intended uses under the conditions of use prescribed, recommended, or suggested in the proposed labeling, FDA will provide written scientific justification for requiring more than one field study. Such justification must be provided no later than 25 calendar days after the date of the conference at which the requirement for more than one field study is established. If FDA does not believe more than one field study is required but the potential applicant voluntarily proposes to conduct more than one field study, FDA will not provide such written justification. If FDA requires one field study to be conducted at multiple locations, FDA will provide justification for requiring multiple locations verbally during the presubmission conference and in writing as part of the memorandum of conference.

(g) *Modification of presubmission conference agreements.* An agreement made under a presubmission conference requested under section 512(b)(3) of the act and documented in a memorandum of conference is binding on the potential applicant and FDA and may only be modified if:

(1) FDA and the potential applicant mutually agree to modify, in part or in whole, the agreement and such modification is documented and provided to the potential applicant as described in paragraph (f)(1) of this section; or

(2) FDA by written order determines that a substantiated scientific requirement essential to the determination of safety or effectiveness of the new animal drug appeared after the conference.

(h) *When the terms of a presubmission conference agreement are not valid*—(1) A presubmission conference agreement will no longer be valid if:

(i) The potential applicant makes to FDA, before, during, or after the presubmission conference, any untrue statement of material fact; or

(ii) The potential applicant fails to follow any material term of the agreement; and

(2) A presubmission conference may no longer be valid if the potential applicant submits false or misleading data relating to a new animal drug to FDA.

(i) *Dispute resolution.* FDA is committed to resolving differences between a potential applicant and FDA reviewing divisions with respect to requirements for the investigation of new animal drugs and for NADAs, supplemental NADAs, and ANADAs as quickly and amicably as possible through a cooperative exchange of information and views. When administrative or procedural disputes arise, a potential applicant should first attempt to resolve the matter within the appropriate review division beginning with the individual(s) most directly assigned to the review of the application or investigational exemption. If the dispute cannot be resolved after such attempts, the dispute shall be evaluated and administered in accordance with applicable regulations (21 CFR 10.75). Dispute resolution procedures may be further explained by guidance available from the Center for Veterinary Medicine.

Dated: August 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–18846 Filed 8–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Firocoxib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merial Ltd. The NADA provides for veterinary prescription use of firocoxib chewable tablets in dogs for the control of pain and inflammation associated with osteoarthritis.

DATES: This rule is effective August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.gov.*

SUPPLEMENTARY INFORMATION: Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, filed NADA 141–230 for PREVICOX (firocoxib) Tablets. The application provides for the veterinary prescription use of firocoxib chewable tablets in dogs for the control of pain and inflammation associated with osteoarthritis. The NADA is approved as of July 21, 2004, and 21 CFR part 520 is amended by adding new § 520.928 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning July 21, 2004.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.928 is added to read as follows:

§ 520.928 Firocoxib.

(a) *Specifications.* Each chewable tablet contains 57 or 227 milligrams (mg) firocoxib.

(b) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* 5 mg per kilogram (2.27 mg per pound) body weight once daily.

(2) *Indications for use.* For the control of pain and inflammation associated with osteoarthritis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: August 2, 2004.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–18897 Filed 8–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate and Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. The ANADA provides for the use of single-ingredient Type A medicated articles containing bacitracin methylene disalicylate and chlortetracycline to make two-way combination drug Type B and Type C medicated feeds for swine.

DATES: This rule is effective August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lonnie.luther@fda.gov.*

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, filed ANADA 200–358 for use of PENNCHLOR (chlortetracycline) and BMD (bacitracin methylene disalicylate) Type A medicated articles to make two-way combination drug Type B and Type C medicated feeds for swine. Pennfield Oil Co.'s ANADA 200–358 is approved as a generic copy of Alpharma, Inc.'s new animal drug application 141–059. The ANADA is approved as of July 2, 2004, and the regulations are amended in § 558.76 (21 CFR 558.76) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA is amending § 558.76 by removing specifications for a bacitracin methylene disalicylate and chlortetracycline combination drug Type B medicated feed that was added to the regulations in 1998 (63 FR 44385, August 19, 1998). The specification contains an error, but also was codified unnecessarily. This amendment is being done to improve the accuracy and consistency of the animal drug regulations.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.76 is amended in the table by revising paragraph (d)(1)(iv) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(1) * * *

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
* *	*	*	*	*
(iv) 10 to 30		Swine: for increased rate of weight gain and improved feed efficiency.	For growing and finishing swine	046573 053389
	Chlortetracycline approximately 400, varying with body weight and food consumption to provide 10 milligrams per pound of body weight per day.	Swine; for increased rate of weight gain and improved feed efficiency; for treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to chlortetracycline.	Feed for not more than 14 days; chlortetracycline provided by Nos. 046573 and 053389 in § 510.600(c) of this chapter.	046573 053389
		Swine; for control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis* susceptible to chlortetracycline.	Feed for not more than 14 days; chlortetracycline and BMD as provided by 046573 in § 510.600(c) of this chapter.	046573

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*

* * * * *

Dated: August 2, 2004.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–18845 Filed 8–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Carbadox and Oxytetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Phibro Animal Health. The NADA provides for the use of approved, single-ingredient Type A medicated articles containing carbadox and oxytetracycline to formulate two-way combination drug Type C medicated feeds for swine.

DATES: This rule is effective August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov*.

SUPPLEMENTARY INFORMATION: Phibro Animal Health, 710 Rt. 46 East, suite 401, Fairfield, NJ 07004, filed NADA 141–211 that provides for the use of MECADOX (carbadox), approved under NADA 41–061, and TERRAMYCIN (oxytetracycline) Type A medicated articles, approved under NADA 95–143, to formulate two-way combination drug Type C medicated feeds for swine. The Type C medicated feeds are used for treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella choleraesuis* susceptible to oxytetracycline, for treatment of bacterial pneumonia caused by *Pasteurella multocida* susceptible to oxytetracycline; and for increased rate of weight gain and improved feed efficiency. The application is approved as of July 21, 2004, and the regulations are amended in 21 CFR 558.115 and 558.450 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.115 is amended by adding paragraph (d)(4) to read as follows:

§ 558.115 Carbadox.

* * * * *

(d) * * *

(4) *Amount.* Carbadox, 10 to 25 grams per ton of feed; plus oxytetracycline, 10 milligrams per pound of body weight.

(i) *Indications for use.* For treatment of bacterial enteritis caused by *Escherichia coli* and *S. choleraesuis* susceptible to oxytetracycline, for treatment of bacterial pneumonia caused by *Pasteurella multocida* susceptible to oxytetracycline; and for increased rate of weight gain and improved feed efficiency.

(ii) *Limitations.* Feed continuously for 7 to 14 days. Not for use in pregnant swine or swine intended for breeding purposes. Do not feed to swine within 42 days of slaughter.

■ 3. Section 558.450 is amended by redesignating paragraph (d)(3)(i) as paragraph (d)(3)(iv); and by adding new paragraph (d)(3)(i) to read as follows:

§ 558.450 Oxytetracycline.

* * * * *

(d) * * *

(3) * * *

(i) Carbadox as in § 558.115 of this chapter.

* * * * *

Dated: August 2, 2004.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–18844 Filed 8–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs; Ractopamine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two new animal drug applications (NADAs) filed by Elanco Animal Health. One NADA provides for use of ractopamine, melengestrol, and monensin Type A medicated articles to make three-way combination Type C medicated feeds for heifers fed in confinement for slaughter. The other NADA provides for use of ractopamine, melengestrol, monensin, and tylosin Type A medicated articles to make four-way combination Type C medicated feeds for heifers fed in confinement for slaughter.

DATES: This rule is effective August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–234 that provides for use of OPTAFLEXX (ractopamine hydrochloride), MGA (melengestrol acetate), and RUMENSIN (monensin sodium) Type A medicated articles to make three-way combination Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; and for suppression of estrus (heat) in heifers fed in confinement for slaughter during the last 28 to 42 days on feed. Elanco Animal Health also filed NADA 141–233 that provides for use of OPTAFLEXX, MGA, RUMENSIN, and TYLAN (tylosin phosphate) Type A medicated articles to make four-way combination Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*; for suppression of estrus (heat); and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces* (*Corynebacterium*) *pyogenes* in heifers fed in confinement for slaughter during the last 28 to 42 days on feed. The NADAs are approved as of July 2, 2004, and the regulations in 21 CFR 558.342, 558.355, 558.500, and 558.625 are amended to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement is required for either.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.342 is amended by adding paragraph (e)(2) to read as follows:

§ 558.342 Melengestrol.

* * * * *

(e) * * *

(2) Melengestrol may also be used with ractopamine alone or in combination as in § 558.500 of this chapter.

§ 558.355 [Amended]

■ 3. Section 558.355 is amended in paragraph (f)(7)(iii) by removing "with tylosin" and by adding in its place "in combination".

■ 4. Section 558.500 is amended by adding paragraphs (e)(2)(viii) and (e)(2)(x) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(e) * * *

* * * * *

(2) *Cattle*—

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	* *	*	* *	*
(viii) 9.8 to 24.6	Monensin 10 to 30, plus melengestrol acetate to provide 0.25 to 0.5 mg/head/day	Heifers fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; and for suppression of estrus (heat).	As in paragraph (e)(2)(vi) of this section; see §§ 558.342(d) and 558.355(d) of this chapter. Melengestrol acetate as provided by No. 000009 in § 510.600(c) of this chapter.	000986

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(x) 9.8 to 24.6	Monensin 10 to 30, plus tylosin 8 to 10, plus melengestrol acetate to provide 0.25 to 0.5 mg/head/day	Heifers fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes*; and for suppression of estrus (heat).	As in paragraph (e)(2)(vi) of this section; see §§ 558.342(d), 558.355(d), and 558.625(c) of this chapter. Melengestrol acetate as provided by No. 000009 in § 510.600(c) of this chapter.	000986

§ 558.625 [Amended]

■ 5. Section 558.625 is amended in paragraph (f)(2)(vii) by removing "with monensin" and by adding in its place "in combination".

Dated: July 27, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–18843 Filed 8–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9155]

RIN 1545–BD58

Guidance Under Section 1502; Treatment of Loss Carryovers From Separate Return Limitation Years

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 that provide guidance regarding the treatment of certain losses available to acquired subsidiaries as a result of an election made under the section 1502 regulations. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. These regulations apply to corporations filing consolidated returns.

DATES: *Effective Date:* These regulations are effective August 18, 2004.

Applicability Date: For dates of applicability see § 1.1502–32T(b)(4)(v)(C).

FOR FURTHER INFORMATION CONTACT: Sean McKeever at (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Under § 1.1502–32(b)(4), if a subsidiary of a consolidated group has a loss carryover from a separate return limitation year when it becomes a member of the group, the group may make an irrevocable election to treat all or any portion of the loss carryover as expiring for all Federal income tax purposes immediately before the subsidiary becomes a member of the group. If the subsidiary was a member of another group immediately before it became a member of the group, the expiration is also treated as occurring immediately after it ceases to be a member of the prior group. Waiving losses of an acquired subsidiary is desirable in cases in which it is anticipated that the losses of the subsidiary may expire unused in that it prevents a negative basis adjustment in the stock of the subsidiary.

In March of 2002, in response to the decision of the United States Court of Appeals for the Federal Circuit in *Rite Aid Corp.* v. *United States*, 255 F.3d 1357 (Fed. Cir. 2001), the Treasury Department and the IRS issued guidance regarding the treatment of certain losses realized on dispositions and deconsolidations of stock of a member of a consolidated group. Those rules permitted groups to calculate allowable loss on the sale of subsidiary stock by applying § 1.1502–20 in its entirety, § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or § 1.337(d)–2T. If a group that made an election described in § 1.1502–20(g) to reattribute to the common parent losses of the subsidiary elected to determine allowable loss by applying either § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or § 1.337(d)–2T, the amount of loss treated as reattributed could be reduced. As a result, losses that were previously treated as reattributed would be treated as available for use by the subsidiary or any other group of which the subsidiary is a member, subject to any applicable limitations (*e.g.*, section 382). To prevent a purchasing consolidated group from being unfairly disadvantaged in the event that the amount of losses treated as reattributed to the common parent of the selling group were decreased and the amount of losses treated as available to the subsidiary were increased (excess losses), § 1.1502–32T(b)(4)(v) was added to provide that, to the extent that the subsidiary's loss carryovers are increased by reason of an election to apply one of the alternative regimes and such loss carryovers expire, or would have been properly used to offset income, in a closed year, the purchasing group will be deemed to have made an election to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before the subsidiary became a member of the purchasing group (the deemed waiver rule). Accordingly, no basis reduction under § 1.1502–32 would result from the expiration of, or failure to use, such losses.

The Treasury Department and the IRS have become aware that the deemed waiver rule may deny the use of excess losses in cases in which such denial was

not intended, particularly in cases in which the excess losses would have been properly used to offset income in a closed year and the use of such losses in the closed year would make losses that were used in the closed year available to offset income in an open year. Accordingly, one commentator has asked that relief from the deemed waiver rule be afforded in these cases. These temporary regulations provide that relief by making the application of the deemed waiver rule optional. This relief is applicable on and after August 18, 2004. In addition, groups may apply this relief before August 18, 2004, and on and after March 7, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations are necessary to provide taxpayers with immediate guidance regarding the treatment of certain subsidiary losses. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Sean McKeever, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–32T is amended by revising paragraph (b)(4)(v)(A) and (C).

§ 1.1502–32T Investment adjustments (temporary).

* * * * *

(b) * * *

(4) * * *

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under § 1.1502–20T(i)(2) is made*—(A) *Expired losses.* Notwithstanding § 1.1502–32(b)(4)(iv), unless a group otherwise chooses, to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under § 1.1502–32(b)(4) to treat all of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. A group may choose not to apply the rule of the previous sentence to all of such loss carryovers of S by taking a position on an original or amended tax return for each relevant taxable year that is consistent with having made such choice.

* * * * *

(C) *Effective date.* Paragraph (b)(4)(v)(A) of this section is applicable on and after August 18, 2004. Groups, however, may apply paragraph (b)(4)(v)(A) of this section before August 18, 2004, and on and after March 7, 2002. Otherwise, see paragraph (b)(4)(v)(A) of § 1.1502–32. Paragraph (b)(4)(v)(B) of this section is applicable on and after March 7, 2002.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 29, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–18789 Filed 8–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 104, 105, and 160

[USCG–2003–16688]

RIN 1625–AA82

Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is changing the definition of certain dangerous cargo to include ammonium nitrate and certain ammonium nitrate based fertilizers, in bulk, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk. This change is necessary to promote maritime safety and security and facilitate the uninterrupted flow of commerce by increasing the Coast Guard's ability to maintain awareness of these cargoes. We are also adding two options for vessels to submit electronically notices of arrival.

DATES: This temporary final rule is effective from September 17, 2004, through March 20, 2006.

Comments and related material must reach the Docket Management Facility on or before November 16, 2004. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before November 16, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–16688 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Junior Grade Kimberly Andersen, G–MPP, Coast Guard, telephone 202–267–2562. If you have

questions about submitting notices of arrival in extensible markup language format, please contact Lieutenant Thomas Philbrick of the Coast Guard's National Vessel Movement Center by electronic mail at *Tom.Philbrick@uscg.dhs.gov*. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

Although we did not publish a notice of proposed rulemaking, we encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to the public docket for this rulemaking.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2003–16688), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and select "simple search" using the last five digits of the docket number (16688). You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would delay the implementation of this regulation, risking public safety and security.

The Coast Guard has participated in briefings with the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Office of Naval Intelligence, and the Department of Transportation that provided new information about the explosive properties of ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101. The Coast Guard has also collected more information regarding the quantities of propylene oxide shipped on the nation's inland waterways. This new, more accurate information raises additional concerns about the dangers associated with handling and transportation of these chemicals.

Background and Purpose

The U.S. Coast Guard published the final rule for notification of arrival (NOA) in U.S. ports on February 28, 2003 (68 FR 9537). That final rule made permanent the requirement to submit NOAs 96 hours in advance of arrival to a centralized location, the National Vessel Movement Center (NVMC). In addition, it required specific crew and passenger information and incorporated changes to the CDC definition *in 33 CFR 160.204*. Since publication of the February 2003 final rule, we have developed additional concerns about potential security hazards of bulk ammonium nitrate and propylene oxide cargoes transported on U.S. waters.

The Coast Guard formally requested input from the Towing Safety Advisory Committee (TSAC) on September 10, 2003, and from the Chemical Transportation Advisory Committee (CTAC) on October 23, 2003. CTAC and TSAC were asked to advise the Coast Guard on the anticipated impact to their respective industries if bulk, solid ammonium nitrate and ammonium nitrate fertilizers that are classified as 5.1 oxidizers were added to our CDC definition. CTAC and TSAC formed a joint working group on this issue. Although both committees accepted the working group minutes, the advisory committees submitted separate written reports to the Coast Guard on January 28, 2004. Both committees acknowledged the security hazards associated with forms of ammonium nitrate and agreed that additional security measures were warranted. The Coast Guard will continue to work closely with both of these committees on cargo security issues.

In response to these concerns, we are adding ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of CDCs for which a notice of arrival is required.

Also, since the February 2003 final rule was published, the Coast Guard has developed two new means for electronic submittal of NOAs to the Coast Guard's NVMC. We are making these options available to vessel owners and operators in this rule.

Discussion of Rule

Notification of Arrival for CDC: The Coast Guard is imposing NOA requirements in 33 CFR part 160 for shipments of two additional types of cargo added to the definition of CDC. The first is ammonium nitrate and ammonium nitrate based fertilizers, in bulk, listed as Division 5.1 materials in 49 CFR 172.101. The second is propylene oxide, alone or mixed with ethylene oxide, in bulk.

These cargoes have been added to the definition of CDC in § 160.204. This change will require vessels carrying these cargoes to provide all required NOA information to the U.S. Coast Guard. This change will increase maritime security and safety and enable the Coast Guard to reduce the risk of a transportation security incident.

Because 33 CFR parts 104 and 105 rely on the definition of CDC in part 160, the change to the definition of CDC will cause some vessels and facilities to become subject to the security planning requirements of 33 CFR parts 104 and 105 for the first time. This rule conforms the vessel applicability section in part 104 to include these cargoes and provides these vessels and facilities with a delay in complying with the requirements of parts 104 and 105. After the effective date of this rule, these vessels and facilities will have 3 months to submit security plans to the U.S. Coast Guard and 6 months for full compliance.

Electronic Submittal of NOA: We have added to 33 CFR 160.210 two new methods to electronically submit an NOA to the U.S. Coast Guard's NVMC. All required information can be entered via Electronic Notice of Arrival (e-NOA)

available on the NVMC Web site: *http://www.nvmc.uscg.gov.*

Alternatively, the NVMC can also accept raw XML (eXtensible Markup Language) formatted documents that conform to the e-NOA schema. If you are interested in creating your own application or modifying your existing business systems to submit XML formatted data to the NVMC, please contact Lieutenant Thomas Philbrick of the NVMC, at *Tom.Philbrick@uscg.dhs.gov* for more information.

Regulatory Evaluation

The Department of Homeland Security considers this rule to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Department, however, concludes that this regulatory action is not economically significant under section 3(f)(1). It is also, therefore, "significant" under the regulatory policies and procedures of the Department of Homeland Security. Accordingly, this regulation has been reviewed by the Office of Management and Budget (OMB). A final assessment is available in the docket as indicated under the "Public Participation and Request for Comments" section of this preamble. A summary of the assessment follows: The purpose of this regulatory assessment (RA) is to estimate the costs of this temporary rule, which will change the definition of CDC to include ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk. This change will promote maritime safety and security and facilitate the uninterrupted flow of commerce by increasing the Coast Guard's ability to maintain awareness of these cargoes. Moreover, this rule provides vessel owners and operators optional methods (online or via e-mail) to submit NOAs. For the purposes of this analysis, we will use a period of January 2004 to June 2005 to show the cost.

In our review of the affected population, we have determined that there are approximately 9,213 barges that can potentially transport ammonium nitrate and ammonium nitrate based fertilizers, in bulk, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, and approximately 40–50 fleeting facilities that can potentially receive these cargoes and, therefore, could be impacted by this rule. However, based on our available data, we note that there are only approximately 600 movements of these cargoes a year. Therefore, the actual number of barges used to transport these cargoes would be only a fraction of the barge population that may potentially transport ammonium nitrate or propylene oxide. Since the industry may want to retain the flexibility to use any of these 9,213 barges to carry these cargoes, we have based our cost estimate on this larger population. For fleeting facilities, we used 50 fleeting areas to estimate our cost.

There are two elements of cost associated with this rulemaking. The first cost stems from the NOA requirements, and the second cost is from the Maritime Transportation Security Act of 2002 (MTSA) regulations. Currently, vessels that transport CDC cargoes are required to prepare and submit NOAs to the Coast Guard. In addition, vessels and facilities that handle CDC cargoes are required to implement security measures, to be in compliance with the MTSA requirements in 33 CFR parts 104 and 105.

The Coast Guard is temporarily changing the NOA and the MTSA regulations in 33 CFR parts 104 and 105 by adding ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of CDCs. Vessels that transport such cargoes will now be required to prepare and submit NOAs. Furthermore, vessels and facilities that handle ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, will now have to implement security measures. Security measures can include preparing security plans and assessments; hiring and training security personnel; and installing security equipment.

The total 18-month cost discounted to its present value (PV) at 7 percent is presented below.

TOTAL RULEMAKING COST (JANUARY 2004—JUNE 2005)

Affected entity	Year 2004	Year 2005	PV for 2005	Total PV cost
NOA requirements:				
Increase in NOA submittals	$8,209	$4,105	$3,836	$12,046
Previously not covered by NOA	46,614	23,307	21,782	68,396
Total cost	54,824	27,412	25,619	80,442
MTSA—Vessel Security:				
Company-level cost	89,200	43,000	40,187	129,387
Vessel-level cost	460,650	230,325	215,257	675,907
Total cost	549,850	273,325	255,444	805,294
MTSA—Facility Security:				
First Group facility	3,395,500	1,151,850	1,203,598	4,599,098
Second Group facility	2,769,000	874,200	817,009	3,586,009
Total cost	6,164,500	2,026,050	2,020,607	8,185,107
Total Cost				9,070,843

Detail may not calculate to total due to independent rounding.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

We expect that this rule may have an economic impact on some small entities, as defined by the Small Business Administration (SBA). Small entities affected by this rule fall into two groups: (1) Those small entities that currently carry or handle CDCs in addition to ammonium nitrate and ammonium nitrate based fertilizers in bulk listed as Division 5.1 materials in 49 CFR 171.101 and propylene oxide, alone or mixed with ethylene oxide, in bulk; and (2) those small entities that currently carry or handle only ammonium nitrate and ammonium nitrate based fertilizers in bulk listed as Division 5.1 materials in 49 CFR 171.101 and propylene oxide, alone or mixed with ethylene oxide, in bulk.

Small entities in the first category currently submit NOA reports and comply with the security measures and planning requirements of the MTSA regulations. These entities will have to submit a greater number of NOA reports for the newly-covered cargoes. They may have to revise existing security plans and change security measures to cover these cargoes.

Small entities in the second category will, for the first time, have to comply with NOA requirements in 33 CFR part 160 for shipments of these cargoes and comply with the security measures and planning requirements of the MTSA regulations in 33 CFR parts 104 and 105.

The Coast Guard is particularly interested in the impact of this rule on small entities. If you are a small entity, we specifically request comments regarding the economic impact of this rule on you.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Junior Grade Kimberly Andersen, G–MPP, Coast Guard, telephone 202–267–2562.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary final rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This temporary final rule modifies two existing OMB-approved collections 1625–0077 (formerly 2115–0622) and 1625–0100 (formerly 2115–0557). The request for approval of this Collection of Information is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. Summaries of the revised collections follow.

Title: Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements.

OMB Control Number: 1625–0077.

Summary of the Collection of Information: The Coast Guard requires security assessments and plans for vessels and facilities. This temporary final rule provides a framework to ensure adequate security planning, drilling, and communication procedures by requiring vessels to develop and submit for approval Vessel Security Assessments (VSA) and Vessel Security Plans (VSP), and by requiring facilities to develop and submit Facility Security Assessments (FSA) and Facility Security Plans (FSP).

Need for Information: The primary need for information is to identify the adequate security mitigating measures that will be implemented when needed.

Proposed Use of Information: The information will be used to identify and communicate the security mitigating measures to the Coast Guard and necessary personnel.

Description of the Respondents: The Company Security Officer, or another designated person, for owners and operators of the affected vessels and facilities is responsible for developing the VSA and VSP for vessels, or the FSA and FSP for facilities.

Number of Respondents: The existing OMB-approved number of respondents is 16,855. This rule would increase that number by 52. The total number of respondents is 16,907.

Frequency of Response: The existing OMB-approved number of responses (as adjusted on February 18, 2004) is 81,118. This rule will increase that number by 9,263. The total number of responses is 90,381.

Burden of Response: The development burden for the VSAs and VSPs for vessels, and the FSAs and FSPs for facilities, is estimated to be approximately 80 hours depending on the size of the company and the number and types of vessels or facilities the company owns. Updating the assessments and plans is estimated to be approximately one to four hours depending on the size of the company and the number and types of vessels or facilities the company owns.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 1,873,458 hours. This rule will increase that number by 9,999 hours. The estimated total annual burden is 1,883,457 hours.

Title: Advance Notice of Vessel Arrival.

OMB Control Number: 1625–0100.

Summary of the Collection of Information: The Coast Guard requires pre-arrival notices from certain vessels entering a port or place in the United States. This temporary final rule adds the requirement to vessels carrying ammonium nitrate and ammonium nitrate based fertilizers that are listed as Division 5.1 materials in 49 CFR 172.101, in bulk, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk.

Need for Information: The primary need for information is to identify the adequate security mitigating measures that will be implemented when needed.

Proposed Use of Information: The information will be used to identify and communicate the security mitigating measures to the Coast Guard and necessary personnel.

Description of the Respondents: Respondents are the owner, agent, master, operator, or person in charge of a vessel that arrives at or departs from a port or place in the United States.

Number of Respondents: The existing OMB-approved number of respondents is 10,367. This rule would increase that number by 111. The total number of respondents is 10,478.

Frequency of Response: The existing OMB-approved number of responses is 68,289. This rule will increase that number by 2,288. The total number of responses is 70,577.

Burden of Response: The existing OMB-approved burden of response is approximately 2.5 hours. This rule will increase that number by 0.25 hours. The estimated burden of response is 2.75 hours.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 173,904 hours. This rule will increase that number by 1,621 hours. The estimated total annual burden is 175,525 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this temporary final rule to the Office of Management and Budget (OMB) for its review of the collection of information. Due to the circumstances surrounding this temporary rule, we asked for "emergency processing" of our request. We received OMB approval for these collections of information on July 29, 2004.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. We received OMB approval for these collections of information on 29 July 2004.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. This rule changes the requirements in the notification of arrival regulations. They are procedural in nature and therefore, are categorically excluded, under figure 2–1, paragraphs (34)(a) and (d), of the Instruction from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 105

Facilities, Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

■ For the reasons discussed in the preamble, the Coast Guard temporarily amends 33 CFR parts 104, 105, and 160 as follows:

PART 104—MARITIME SECURITY: VESSELS

■ 1. The authority citation for part 104 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 104.105, temporarily suspend paragraph (a)(9) and add a new paragraph (a)(12) to read as follows:

§ 104.105 Applicability.

(a) * * *

(12) Barge carrying CDC in bulk or barge that is subject to 46 CFR Chapter I, subchapter I, that is engaged on an international voyage.

* * * * *

■ 3. In § 104.115, temporarily add a new paragraph (d) to read as follows:

§ 104.115 Compliance dates.

* * * * *

(d) Owners or operators of vessels that carry ammonium nitrate or ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, as listed in the definition of certain dangerous cargo (CDC) in § 160.204 of this title, must:

(1) Submit vessel security plans to the U.S. Coast Guard in accordance with subpart D of this part not later than December 16, 2004.

(2) Be operating in full compliance with the requirements of this part not later than March 16, 2005.

■ 4. In § 104.410, temporarily add a new paragraph (g) to read as follows:

§ 104.410 Submission and approval.

* * * * *

(g) Owners or operators of vessels that carry ammonium nitrate or ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, as listed in the definition of certain dangerous cargo (CDC) in § 160.204 of this title, must submit vessel security plans to the U.S. Coast Guard in accordance with subpart D of this part not later than December 16, 2004.

PART 105—MARITIME SECURITY: FACILITIES

■ 5. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 6. In § 105.115, temporarily add a new paragraph (c) to read as follows:

§ 105.115 Compliance dates.

* * * * *

(c) Owners or operators of facilities that receive vessels carrying ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, as listed in the definition of certain dangerous cargo (CDC) in § 160.204 of this title, and are not otherwise required to comply with this part must:

(1) Submit facility security plans to the U.S. Coast Guard in accordance with subpart D of this part not later than December 16, 2004.

(2) Be operating in full compliance with the requirements of this part not later than March 16, 2005.

■ 7. In § 105.410, temporarily add a new paragraph (g) to read as follows:

§ 105.410 Submission and approval.

* * * * *

(g) Owners or operators of facilities that receive vessels carrying ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, as listed in the definition of certain dangerous cargo (CDC) in § 160.204 of this title, and are not otherwise required to comply with this part, must submit facility security plans to the U.S. Coast Guard in accordance with subpart D of this part not later than December 16, 2004.

PART 160—PORTS AND WATERWAYS SAFETY-GENERAL

■ 8. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart D is also issued under the authority of 33 U.S.C. 125 and 46 U.S.C. 3715.

■ 9. In § 160.204, in the definition for "Certain dangerous cargo (CDC)", add new temporary paragraphs (9) and (10) to read as follows:

§ 160.204 Definitions.

* * * * *

Certain Dangerous Cargo (CDC)

* * * * *

(9) Ammonium nitrate and ammonium nitrate based fertilizers, in bulk, listed as a Division 5.1 material in 49 CFR 172.101.

(10) Propylene oxide, alone or mixed with ethylene oxide, in bulk.

* * * * *

■ 10. In § 160.210, temporarily suspend paragraph (a), and temporarily add a new paragraph (e) to read as follows:

§ 160.210 Methods for submitting an NOA.

* * * * *

(e) *Submission to the National Vessel Movement Center (NVMC).* Except as provided in paragraphs (b) and (c) of this section, vessels must submit NOA information required by § 160.206 (entries 1–9 to Table 160.206) to the NVMC, United States Coast Guard, 408 Coast Guard Drive, Kearneysville, WV 25430, by:

(1) Electronic submission via the electronic NOA (e-NOA) available on the NVMC web site at *http://www.nvmc.uscg.gov;*

(2) Electronic submission via web service of formatted XML (eXtensible Markup Language) documents. E-mail *sans@nvmc.uscg.gov* to ask for the XML schema details;

(3) E-mail at *sans@nvmc.uscg.gov.* Workbook available at *http://www.nvmc.uscg.gov;*

(4) Fax at 1–800–547–8724 or 304–264–2684. Workbook available at *http://www.nvmc.uscg.gov;* or,

(5) Telephone at 1–800–708–9823 or 304–264–2502.

Dated: August 9, 2004.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 04–18899 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–MN–0001; FRL–7794–5]

Approval and Promulgation of Implementation Plans; Minnesota; Sulfur Dioxide; United Defense

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to Minnesota's State Implementation Plan (SIP) for Sulfur Dioxide (SO_2) for the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minesota. This revision replaces the Administrative Order, originally issued to the facility on May 27, 1992, with a Title V permit containing non-expiring Title I SIP conditions, issued on November 25, 2002. The Minnesota Pollution Control Agency (MPCA) submitted this SIP revision on December 19, 2002.

DATES: This "direct final" rule is effective on October 18, 2004, unless EPA receives adverse written comments by September 17, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Docket ID No. R05–OAR–2004–MN–0001 by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. R05–OAR–2004–MN–0001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the proposed rules section of this **Federal Register.**

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized as follows:

I. General Information

A. Does This Action Apply to Me?

This action is rulemaking on a Sulfur Dioxide plan for the United Defense, LP facility located in Anoka County.

B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection on EDOCKET and a hard copy file which is available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under Docket ID No. R05–OAR–2004–MN–0001. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket "R05–OAR–2004–MN–0001" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of

the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the proposed rules section of this **Federal Register**.

II. What Has Minnesota Submitted?

On December 19, 2002, the MPCA submitted a revision to Minnesota's SIP for SO_2 for the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minnesota. This revision replaces the Administrative Order, originally issued to the facility on May 27, 1992, with a Title V permit containing non-expiring Title I SIP conditions, issued on November 25, 2002.

In addition to changing the form of the SIP for United Defense, the revision reflects several operational changes which result in reduced modeled ambient SO_2 impacts. The revised SIP reflects the fact that several older boilers were replaced by three newer units according to the schedule in the original Administrative Order. In addition, non-expiring permit conditions limit the sulfur content in the fuel used, whereas the Administrative order set emission limits for SO_2. The new boilers are restricted to using either natural gas or No. 2 fuel oil with a maximum of 0.05 percent sulfur by weight; the Administrative Order allowed up to 0.40 percent sulfur. Standby generators are restricted to using diesel fuel with a maximum sulfur content of 0.05 percent; the Administrative Order allowed up to 0.50 percent sulfur. The permit no longer allows the use of waste oil, with up to 1.9 percent sulfur, which had been allowed by the Administrative Order. To demonstrate compliance with these provisions, the facility is required to obtain and maintain written documentation of each shipment of No. 2 fuel oil and diesel fuel oil received for the boilers. The documentation must include the sulfur content of the fuel and the method used to determine the sulfur content.

The facility has also established federally enforceable emission limits for volatile organic compounds, nitrogen oxides, hazardous air pollutants, particulate matter, and total particulate matter to avoid classification as a major source under new source review or national emission standards for hazardous air pollutants.

Minnesota has submitted updated dispersion modeling to support the proposed changes at the facility.

III. Did Minnesota Hold a Public Hearing?

Under Minnesota administrative procedures, the MPCA may publish a public notice and offer the opportunity for a public hearing in lieu of automatically holding a hearing. The MPCA published notice of its intended action on this permit and SIP revision; instituted a public comment period which ran from October 17, 2002, to November 15, 2002; and offered the opportunity for interested persons to request that MPCA hold a public information meeting, request that MPCA hold a contested case hearing, and/or submit a petition to the Commissioner requesting that the MPCA Board consider the permit matter. The MPCA received no comments pertaining to the SIP conditions and there were no requests for a public hearing.

IV. What Action Is EPA Taking?

EPA is approving the December 19, 2002, revision to SIP for SO_2 for the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minnesota. The recordkeeping requirements are appropriate to demonstrate compliance with sulfur content limits and the state has demonstrated through appropriate use of dispersion modeling that the area remains in attainment of the National Ambient Air Quality Standards for SO_2.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 19, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Y—Minnesota

■ 2. Section 52.1220 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(65) The Minnesota Pollution Control Agency submitted a revision to Minnesota's State Implementation Plan for sulfur dioxide on December 19, 2002. This revision consists of a Title V permit for the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minnesota. The Permit contains non-expiring Title I SIP conditions.

(i) Incorporation by reference.

(A) Title I conditions contained in the November 25, 2002, Title V permit (permit number 00300020–001) issued to the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minnesota.

[FR Doc. 04–18766 Filed 8–17–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0196; FRL–7783–7]

RIN 2060–AK73

National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; stay.

SUMMARY: The EPA is staying the effectiveness of two subcategories of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for stationary combustion turbines: Lean premix gas-fired turbines and diffusion flame gas-fired turbines. Pending the outcome of EPA's proposal to delete these subcategories from the source category list (68 FR 18338, April 7, 2004), EPA is staying the effectiveness of the emissions and operating limitations in the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. This action is necessary to avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted.

DATES: The final rule is effective on August 18, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0196. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 10460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Rimer, Office of Air Quality Planning and Standards, Emission Standards Division, C404–01, Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541–2962; fax number: 919–541–0840; e-mail address: *rimer.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the regulation.	4911	2211	Electric power generation, transmission, or distribution.
	4922	486210	Natural gas transmission.
	1311	211111	Crude petroleum and natural gas production.
		.....	
	1321	211112	Natural gas liquids producers.
	4931	221	Electric and other services combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is affected by this action, you should examine the applicability criteria in § 63.6085 of the final rule and the subcategory definitions in § 63.6090. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by 60 days from publication in the **Federal Register**. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

I. Summary of Final Rule

EPA is issuing a final rule to stay the effectiveness of the emission standards for new sources in two subcategories of the NESHAP for stationary combustion turbines. The effect of this stay is to suspend the obligation of sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories to comply with the emissions limitations and operating limitations set forth in 40 CFR part 63, subpart YYYY. EPA is codifying this stay by amending the text of 40 CFR 63.6095 as set forth below.

Under this stay, new sources in the in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories, sources constructed or reconstructed after January 14, 2003, are temporarily relieved of the obligation to apply pollution controls and to comply with associated operating, monitoring, and reporting requirements. However, such sources must continue to submit Initial Notifications pursuant to 40 CFR 63.6145.

The final stay shall take effect immediately upon publication in the **Federal Register**, but only during the pendency of a separate rulemaking to delist the subcategories. It is not our intention by staying the effectiveness of the standards to change the definition of new sources within these subcategories or to alter the status of any individual source. If the subcategories are not ultimately delisted, the stay will be lifted, and all sources in the subcategories constructed or reconstructed after January 14, 2003 will then be subject to the final standards. The sources will then be given the same time to make the requisite demonstration of compliance they would have had if there had been no stay.

II. Background

The final MACT standards for stationary combustion turbines were published on March 5, 2004 (69 FR 10512). These standards, codified at 40 CFR part 63, subpart YYYY, define the subcategories for the Stationary Combustion Turbines source category.

On April 7, 2004, EPA proposed a rule to amend the list of categories of sources that was developed pursuant to Clean Air Act (CAA) section 112(c)(1)(69 FR 18327). EPA proposed to delete four subcategories from the Stationary Combustion Turbines source category. The subcategories proposed for delisting, as defined in 40 CFR 63.6175, are: (1) Lean premix gas-fired stationary combustion turbines (also referred to herein as "lean premix gas-fired turbines"), (2) diffusion flame gas-fired stationary combustion turbines (also referred to herein as "diffusion flame gas-fired turbines"), (3) emergency stationary combustion turbines, and 4) stationary combustion turbines located on the North Slope of Alaska.

The proposed rule to amend the source category list was issued in part to respond to a petition submitted by the Gas Turbine Association (GTA) and in part upon the Administrator's own motion. Petitions to remove a source category from the source category list are permitted under section 112(c)(9) of the CAA. The proposed rule to delete the four subcategories is based on an initial determination by EPA that the subcategories satisfy the substantive criteria for deletion set forth in section 112(c)(9)(B). The proposed rule to delete the subcategories contains a detailed description of the technical basis for the initial determination.

At the same time that EPA proposed to delist the four combustion turbines subcategories, we also proposed a companion action to stay the effectiveness of the standards in the lean premix gas-fired and diffusion flame-subcategories (69 FR 18338, April 7, 2004).

III. Basis for Stay

Although EPA proposed to delete from the source category list four subcategories established by the final MACT standards for stationary combustion turbines, CAA section 112(d)(10) provides that the standards as promulgated for the four subcategories take effect upon publication of the standards. Without a stay, all turbines in the lean premix gas-fired turbine and the diffusion flame gas-fired turbine subcategories which were constructed or reconstructed after January 14, 2003, would have been required to comply immediately with the emission standards for new sources. This would have caused some sources in the two subcategories to make immediate expenditures on installation and testing of emission controls, even though such controls will not be required if we issue a final rule to delete these subcategories.

In view of our initial determination that the statutory criteria for delisting have been met for all sources in the four subcategories, we consider it inappropriate and contrary to statutory intent to mandate such expenditures until a final determination has been made whether or not these subcategories should be delisted. Such expenditures would be wasteful and unwarranted if we take final action to delist these subcategories. Moreover, if we take final action to delist the subcategories, sources constructed or reconstructed while the rulemaking to delist is pending would bear a regulatory burden not placed on identical sources constructed or reconstructed thereafter. Accordingly, we are issuing this stay to the effectiveness of the emission standards for new sources for the lean premix gas-fired turbine and diffusion flame gas-fired turbine subcategories during the pendency of the rulemaking to delete these subcategories.

We are mindful that there would be no need to stay the effectiveness of the standards for new sources in the two subcategories if a rulemaking to delist the affected sources had been completed before promulgation of the final MACT standards for combustion turbines. However, we note that the GTA petition was not submitted until quite late in the regulatory process. Moreover, we generally do not make a definite determination concerning the characteristics of subcategories until promulgation of final MACT standards. In these circumstances, we do not believe it would be fair to make certain affected sources bear the burden of a delay in our determination that a subcategory meets the statutory criteria for delisting.

The final stay is consistent with the precedents we have established in similar circumstances in the past. In 1991, we issued a final rule staying the effective date of the National Emission

Standards for Radionuclear Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H (40 CFR part 61, subparts H and I) for commercial nuclear power reactors during the pendency of another rulemaking to rescind the standards for those facilities (56 FR 37158, August 5, 1991). The rescission was authorized by section 112(d)(9) of the CAA (the "Simpson amendment"), which provides that we may decline to regulate Nuclear Regulatory Commission (NRC) licensees under CAA section 112 if the Administrator determines that the regulatory program established by the NRC for a category or subcategory provides an ample margin of safety to protect the public health. We had made an initial determination that the NRC program for commercial nuclear power reactors met this test, and we reasoned that "it would frustrate the evident purpose of Section 112(d)(9) if EPA were to permit Subpart I to take effect for this subcategory during the pendency of the rulemaking on rescission" (56 FR 37159). That action was not challenged.

In 1995, we acted to provide another type of interim relief during a delisting rulemaking. We suspended the listing of caprolactam during a rulemaking to delete caprolactam from the list of hazardous air pollutants established by CAA section 112(b)(1) for purposes of determining the applicability of title V permitting requirements (60 FR 081, September 18, 1995). We based that action on our determination that "retention, during the rulemaking to delist caprolactam, of permit application requirements which will no longer exist after the delisting process has been completed would result in unnecessary private and public expenditures on preparation, submission, and processing of such applications, and would yield no environmental benefits" (60 FR 084–85). That interim relief action also was not challenged.

IV. Summary of Comments and EPA Responses

The EPA received six comments on the proposed stay and all commenters supported the proposed EPA action; we received no comments opposing the stay.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adverse affect in a material way the economy, a sector to the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final action constitutes a "significant regulatory action" because it may raise novel policy issues and is therefore subject to OMB review. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The final action stays the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories until a conclusion is reached regarding deletion of these subcategories. Therefore, this rule eliminates the need for information collection for regulatory compliance purposes under the CAA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For the purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this final action, can include manufacturing (NAICS 3999–03) and air transportation (NAICS 4522–98 and 4512–98) operations that employ less 1,000 people and engineering services operations (NAICS 8711–98) that earn less than $20 million annually; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's final rule on small entities, EPA has concluded that this final action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the final rule on small entities." (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The final rule stays the effectiveness of the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. This will suspend the requirements to apply pollution controls and associated

operating, monitoring, and reporting requirements. These requirements will be permanently lifted if EPA ultimately removes the four source categories from the Stationary Combustion Turbines source category, and temporarily lifted if EPA does not ultimately delist the subcategories. We have, therefore, concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 1044, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates for State, local, or tribal governments or the private sector. The final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. In any event, EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The final rule relieves a regulatory requirement.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The term "policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the final regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the final regulation.

Today's action stays the effectiveness of the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. It does not impose any additional requirements on the States and does not affect the balance of power between the States and the Federal government. Thus, the requirements of section 6 of Executive Order 13132 do not apply to the final rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. The final action stays the effectiveness of the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because this action is not based on health or safety risks. Thus, Executive Order 13045 does not apply to the final rule.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as "significant energy actions." The final rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. The final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing today's final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the comptroller General of the United States prior to publication of the rule in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on August 18, 2004.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 1, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart YYYY—National Emissions Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

■ 2. Section 63.6095 is amended by revising paragraph (a) and by adding paragraph (d) to read as follows:

§ 63.6095 When do I have to comply with this subpart?

(a) *Affected sources.* (1) If you start up a new or reconstructed stationary combustion turbine which is a lean premix oil-fired stationary combustion turbine or a diffusion flame oil-fired stationary combustion turbine as defined by this subpart on or before March 5, 2004, you must comply with the emissions limitations and operating limitations in this subpart no later than March 5, 2004.

(2) If you start up a new or reconstructed stationary combustion turbine which is a lean premix oil-fired stationary combustion turbine or a diffusion flame oil-fired stationary combustion turbine as defined by this subpart after March 5, 2004, you must comply with the emissions limitations and operating limitations in this subpart upon startup of your affected source.

* * * * *

(d) *Stay of standards for gas-fired subcategories.*

If you start up a new or reconstructed stationary combustion turbine that is a lean premix gas-fired stationary combustion turbine or diffusion flame gas-fired stationary combustion turbine as defined by this subpart, you must comply with the Initial Notification requirements set forth in § 63.6145 but need not comply with any other requirement of this subpart until EPA takes final action to require compliance and publishes a document in the **Federal Register.**

[FR Doc. 04–15529 Filed 8–17–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–15712]

Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; delay of compliance date.

SUMMARY: NHTSA published a final rule in July 2003 that amended the Federal motor vehicle safety standard on glazing materials. The agency received several petitions for reconsideration of the rule. At present, the rule is to take effect on September 1, 2004. To allow for more time to respond to the petitions, this document delays the compliance date of the final rule.

DATES: This final rule becomes effective August 18, 2004. The compliance date of the final rule published on July 25, 2003 (68 FR 43964) and amended on September 26, 2003 (68 FR 55544) and on January 5, 2004 (69 FR 279) is delayed until September 1, 2006. Any petitions for reconsideration of today's final rule must be received by NHTSA not later than October 4, 2004.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. John Lee, Office of Crashworthiness Standards, at (202) 366–2264, facsimile (202) 366–4329 or Mr. Patrick Boyd, Office of Crash Avoidance Standards, at (202) 366–6346, facsimile (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992, facsimile (202) 366–3820.

You may send mail to any of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 205 *Glazing Materials* specifies performance requirements for glazing installed in motor vehicles. It also specifies the

vehicle locations in which the various types of glazing may be installed. On July 25, 2003 (68 FR 43964)(DMS Docket No. NHTSA–2003–15712), NHTSA published a final rule (July 25 final rule) updating FMVSS No. 205 by incorporating by reference the 1996 version of the American National Standards Institute (ANSI) standard on motor vehicle glazing. Prior to the July 25 final rule, FMVSS No. 205 referenced the 1977 version of ANSI Standard Z26.1, "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," and the 1980 supplement to that standard.

The July 25 final rule has simplified and amended the glazing performance requirements. By incorporating by reference the 1996 version of the ANSI standard, the agency was able to remove most of the existing text in FMVSS No. 205.

In addition to incorporating the 1996 ANSI standard, the final rule addressed several issues not covered by that standard. For example, the final rule limited the size of the shade band located at the top of the windshield and clarified the meaning of the term "the most difficult part or pattern" for the fracture test in the 1996 ANSI standard. The final rule also made minor conforming amendments to the standard on low speed vehicles.

In a final rule of January 5, 2004 (69 FR 279)(DMS Docket No. NHTSA–2003–15712), NHTSA established September 1, 2004 as the effective date of the July 25, 2003 final rule. For further details on the subject final rule, please see 68 FR 43964 (July 25, 2003).

II. Petitions for Reconsideration

In response to the July 25 final rule, the agency received six petitions for reconsideration. Petitions were submitted by DaimlerChrysler, General Motors (GM), Alliance for Automobile Manufacturers (Alliance), PPG Industries (PPG), Pilkington North America (PNA), and Visteon. Petitioners have asked the agency to reconsider the following issues.

1. The Up-Angle of the Windshield Shade Band

DaimlerChrysler, GM, PPG, PNA, and Visteon have asked that the agency reconsider its decision to change the visibility up-angle from 5 degrees to 7 degrees. Specifically, petitioners note that NHTSA has not demonstrated a safety need for this technical modification, and that the up-angle change was not discussed in the NPRM. DaimlerChrysler estimates that 25% of vehicles currently in production would not comply with the 7-degree up-angle requirement. Accordingly, petitioners contend that the change in the up-angle would place a significant burden on the manufacturers. Additionally, Visteon commented that the change in up-angle would necessitate a costly redesign of aftermarket replacement glazing.

2. The Terms "Most Difficult Part or Pattern" and "Day Light Opening"

GM, DaimlerChrysler, PPG and PNA have asked the agency to clarify or reconsider the meaning of the phrase "most difficult part or pattern" in the context of the fracture test provisions of ANSI Z26. Specifically, petitioners contend that the preamble to the final rule, S5.2 of the regulatory text, and NHTSA's previous interpretations on the issue, are inconsistent as to the use of the phrase.

DaimlerChrysler and PPG have also asked the agency to formally define the term "Day Light Opening" and rescind a previously issued interpretation letter on the subject.

3. Soldered Terminals

DaimlerChrysler, GM, PPG, PNA and Alliance have asked the agency to reconsider its position with respect to soldered terminals. Specifically, petitioners ask that compliance fracture testing be conducted without soldered terminals being attached to glazing. According to petitioners, a prior interpretation letter on the issue, coupled with the language in the final rule created confusion as to whether fracture testing would be conducted with the terminals attached. Petitioners ask that NHTSA clarify both the new testing procedure and also a distinction between conductors and terminals.

4. Effective Date

Petitioners, including PNA, GM, DaimlerChrysler, PPG and Visteon, have asked the agency to delay the effective date of the updated FMVSS No. 205 by up to 3 years. In support of their request, DaimlerChrysler argued that glazing manufacturers would need to perform extensive testing to demonstrate compliance with the updated requirements of FMVSS No. 205. Further, some glazing manufacturers might need to add additional equipment in order to perform the necessary testing.

5. Aftermarket Parts

DaimlerChrysler, PNA, GM and PPG have asked that the agency also consider permitting compliance with the old requirements of FMVSS No. 205 for the manufacture of aftermarket replacement glazing. According to the petitioners, it would not be feasible to redesign replacement glazing such that it would meet the updated requirements of FMVSS No. 205. Similarly, Visteon commented that the final rule necessitates a redesign of aftermarket glazing that may be time-consuming because the necessary vehicle data is not readily available to glazing manufacturers.

III. Today's Final Rule; Delay of Compliance Date

Previously, NHTSA has established September 1, 2004 as the compliance date for the July 25, 2003 final rule. In six petitions for reconsideration, NHTSA has been asked to reconsider several aspects of the July 25, 2003 final rule. NHTSA is in the process of considering all six petitions. Given the imminence of the September 1, 2004 compliance date, the agency has decided to delay the compliance date of the July 25, 2003 final rule until September 1, 2006. The issues raised in the petitions for reconsideration will be addressed by the agency in a separate document.

The agency believes that a delay is necessary to ensure that glazing and automobile manufacturers do not face substantial economic hardship associated with certain new requirements of the amended FMVSS No. 205. As discussed in the petitions, the updated requirements of FMVSS No. 205 may necessitate extensive testing and compliance costs by glazing manufacturers.

NHTSA expects that all the issues raised in the petitions will be fully addressed prior to the new, September 1, 2006 compliance date. If these issues have not been resolved by the new compliance date, all affected manufacturers will be required to meet the new requirements. Compliance dates of agency final rules are not stayed due to outstanding petitions for reconsideration of those rules.

IV. Regulatory Analyses and Notices

A. Executive Order, 12866 Regulatory Planning and Review

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It does not impose any burden on manufacturers, and extends the compliance date of a final rule amending FMVSS No. 205 for two years. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. This rulemaking action extends the date by which the manufacturers must comply with the newly upgraded requirements of FMVSS No. 205. This rulemaking does not impose any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action will have on small entities (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act.

The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule affects manufacturers of motor vehicles and motor vehicle glazing. According to the size standards of the Small Business Association (at 13 CFR 121.601), manufacturers of glazing are considered manufacturers of "Motor Vehicle Parts and Accessories" (SIC Code 3714). The size standard for SIC Code 3714 is 750 employees or fewer. The size standard for manufacturers of "Motor Vehicles and Passenger Car Bodies" (SIC Code 3711) is 1,000 employees or fewer. This Final Rule will not have any significant economic impact on a substantial number of small businesses in these industries because the rule only delays by two years, the compliance date of the previously published final rule. Small organizations and governmental jurisdictions that purchase glazing will not be significantly affected because this rulemaking will not cause price increases. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." E.O. 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action, which extends the compliance date of a final rule amending FMVSS No. 205, will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Since it only delays the compliance date of a final rule, this final rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained.

G. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a Federal motor vehicle safety standard only if the standard is identical to the Federal standard. However, the United States Government, a state, or political subdivision of a state, may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings are not required before parties file suit in court.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

Comment is solicited on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."

Certain technical standards developed by the American National Standards Institute (ANSI) and Society of Automotive Engineers (SAE) have been considered and incorporated by reference in the final rule published on July 25, 2003, which upgraded the requirements of FMVSS No. 205. This final rule extends the compliance date of that final rule to September 1, 2006.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to E.O. 13045 because it is not "economically significant" as defined under E.O. 12866, and does not concern an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 and 30177; delegations of authority at 49 CFR 1.50 and 501.8.

■ 2. Section 571.205 is amended by adding a second sentence to S3.1 to read as follows:

§ 571.205 Glazing Materials

* * * * *

S3.1 *Application.* * * * For motor vehicles and glazing equipment manufactured before September 1, 2006, the manufacturer may, at its option, comply with 49 CFR 571.205 revised as of October 1, 2003 instead of this version.

* * * * *

Issued on: August 3, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–18209 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 081204C]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Implementation of the Yellowtail Flounder Landing Limit for Western and Eastern U.S./Canada Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Implementation of the Yellowtail Flounder Landing Limit for Western and Eastern U.S./Canada Areas.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has projected that 70 percent of the total allowable catch (TAC) of Georges Bank (GB) yellowtail flounder that may be harvested from the Western and Eastern U.S./Canada Areas will be harvested by August 18, 2004. The Regional Administrator, therefore, is implementing a yellowtail flounder trip limit of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip for NE multispecies vessels fishing in both the Western and Eastern U.S./Canada Areas, effective August 18, 2004.

DATES: Effective 0001 hrs local time, August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the yellowtail flounder landing limit within the Western and Eastern U.S./Canada Areas are found at 50 CFR 648.85(a)(3)(iv)(C). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies day-at-sea (DAS) to fish in the U.S./Canada Management Area, under specific conditions. The TAC allocation for GB yellowtail flounder for the 2004 fishing year was specified at 6,000 mt in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) (April 27, 2004, 69 FR 22906). Section 648.85(a)(3)(iv)(C)(2) authorizes the Regional Administrator to implement and/or adjust the yellowtail flounder landing limit for NE multispecies vessels fishing in both the Western and Eastern U.S./Canada Areas to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip when 70 percent of the GB yellowtail flounder TAC is projected to be harvested.

Based upon Vessel Monitoring System reports and other available information, the Regional Administrator has determined that 70 percent (4,200 mt) of the GB yellowtail flounder TAC of 6,000 mt will be harvested by August 18, 2004. Based on this information, the trip limit of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip, is implemented effective August 18, 2004, for NE multispecies vessels fishing in both the Western and Eastern U.S./Canada Areas.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–18930 Filed 8–13–04; 2:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040521156–4228–02; I.D. 051704E]

RIN 0648–AS10

Fisheries of the Exclusive Economic Zone Off Alaska; Removal of a Harvest Restriction for the Harvest Limit Area Atka Mackerel Fishery in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that removes a harvest restriction on participants in the harvest limit area (HLA) Atka mackerel fishery in the Aleutian Islands subarea. The regulatory amendment allows participants assigned to an HLA fishery to harvest Atka mackerel outside of the HLA during the first HLA fishery in each of two seasons. This action allows participants to harvest Atka mackerel efficiently, reduces competition with Steller sea lions for prey species within the HLA, and does not increase competition among participants in the groundfish fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP), and other applicable laws.

DATES: Effective September 17, 2004.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) prepared for this action and the 2000 and 2001 Biological Opinions on the groundfish fisheries may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the Exclusive Economic Zone of the Bering Sea and Aleutian Islands management area are managed under the FMP. The North Pacific Fishery Management Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq*. Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

The western distinct population segment (DPS) of Steller sea lions has been listed as endangered under the Endangered Species Act, and critical habitat has been designated for this DPS (50 CFR 226.202). In order to protect Steller sea lions from jeopardy of extinction and their critical habitat from adverse modification from the effects of the groundfish fisheries, temporal and spatial harvest restrictions were established in regulations for the groundfish fisheries of Alaska (68 FR 204, January 2, 2003). Atka mackerel is an important prey species for Steller sea lions. Under the harvest restrictions, the harvest of Atka mackerel in the Aleutian Islands subarea is managed to control the amount of harvest over time and area. The details for managing the Atka mackerel fishery in 2004 are in the annual harvest specifications (69 FR 9242, February 27, 2004).

The regulations at 50 CFR 679.20(a)(8) establish a HLA fishery to control the removal of Atka mackerel in the HLA. The details of the HLA fishery are explained in the proposed rule for Steller sea lion protection measures (67 FR 56692, September 4, 2002). The HLA is the waters of statistical areas 542 and 543 west of 178° W longitude within 20 nautical miles seaward of sites listed in Table 6 of 50 CFR part 679 and located west of 177°57.00′ W longitude. This area includes critical habitat for Steller sea lions and additional waters around haulouts that are considered important for Steller sea lion foraging.

To reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas, the Atka mackerel trawl fleet is divided into two groups assigned to fish in the HLA in either statistical area 542 or statistical area 543. HLA fisheries are conducted twice in each of two seasons. The current regulations at § 679.7(a)(19) and § 679.20 (a)(8)(iii) prohibit fishing for all groundfish outside the HLA, including Atka mackerel, during the first assigned HLA fishery in a season. The intent of this prohibition is to ensure participants in the HLA fishery do not switch to another groundfish fishery during these time periods and increase competition with participants in those fisheries.

This final rule allows participants in the HLA fishery to fish for Atka mackerel outside of the HLA during the first assigned HLA fishery in a season. The prohibition on fishing for groundfish species other than Atka mackerel during the first assigned HLA fishery is not affected by this final rule. This action provides the potential for additional reduction in the rate of Atka mackerel harvest in the HLA consistent with the objectives of the Steller sea lion protection measures. The final rule also provides the fishing industry with additional locations during the first HLA fisheries to Atka mackerel fishing grounds outside of critical habitat without competing with other groundfish fisheries.

The proposed rule for this action was published in the **Federal Register** on June 2, 2004 (69 FR 31085), with a comment period ending June 17, 2004. No changes were made from the proposed rule in the final rule.

Comments and Responses

One email comment was received regarding the proposed rule. The email contained three separate comments which are summarized and responded to below.

Comment 1: The email address for submitting comments on the proposed rule is ridiculous. It can be easily mistyped which may result in lost comments.

Response: NMFS email addresses for providing public comment on proposed actions contain text that identifies the action on which comments are being accepted. The email address for the proposed rule for this action was AM–HLA–0648–AS10. "AM" stands for Atka mackerel, "HLA" stands for harvest limit area, and "0684–AS10" is the regulatory identification number that was assigned to this action. By using these identifiers in the email address, NMFS can easily sort emails received on a number of actions that are concurrently open for public comment, ensuring public comments are attributed to the correct action. The email commenter will need to carefully type the email address, but the extra effort to type the address will ensure the comment is received and is considered for the correct action.

Comment 2: The commercial fisheries participants seem to not want fish to be available to Steller sea lions. This is abusive to Steller sea lions, and the fishery quotas should be cut.

Response: The action provides additional protection to Steller sea lions by allowing Atka mackerel fishers to harvest Atka mackerel outside of the HLA, an area important for Steller sea lion foraging. The initial request for this action came from commercial fishing industry representatives based on their concern for efficient harvest of Atka mackerel and the additional benefit that potentially could result for Steller sea lions by reducing competition for Atka mackerel in the HLA.

The Atka mackerel total allowable catch (TAC) amounts are set at conservative levels each year during the harvest specifications process, and annual harvest is dispersed over time and space as required by the specifications and fishery regulations. The process of setting the TAC amounts and controlling the spatial and temporal harvest of Atka mackerel meets the requirements of the Steller sea lion protection measures. A reduction of TAC is not needed at this time based on the abundance and condition of the Atka mackerel stock and the fishery's compliance with Steller sea lion protection measures.

Comment 3: The proposed action shows that NOAA is not acting to protect any wildlife at all.

Response: The Atka mackerel fishery is conducted in compliance with the Steller sea lion protection measures. These measures were designed to allow the harvest of Atka mackerel in a manner that does not jeopardize the continued existence or destroy or adversely modify critical habitat for the western distinct population segment of Steller sea lions. This action has the potential to provide additional protection to Steller sea lions by reducing potential competition for prey within the HLA.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification or the economic impact of the rule. As a result, a regulatory flexibility analysis was not required and none prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 12, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; and Pub. L.106–554, Sec. 209.

■ 2. In § 679.7, paragraph (a)(19) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(19) *Atka Mackerel HLA Groundfish Prohibition.* For vessels registered for an Atka mackerel HLA directed fishery under § 679.20(a)(8)(iii), conduct directed fishing for groundfish, other than Atka mackerel, during the time period that the first Atka mackerel HLA directed fishery to which the vessel is assigned under § 679.20(a)(8)(iii)(B) is open.

* * * * *

■ 3. In § 679.20, paragraph (a)(8)(iii)(F) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(8) * * *

(iii) * * *

(F) *Groundfish directed fishery prohibition.* Vessels registering under paragraph (a)(8)(iii)(A) of this section are prohibited from participating in any groundfish directed fishery, other than Atka mackerel, during the opening of the first HLA directed fishery assigned to the vessel in a season, as specified in § 679.7(a)(19).

* * * * *

[FR Doc. 04–18958 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 159
Wednesday, August 18, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 03–033P]

RIN 0583–AD08

Frequency of Foreign Inspection System Supervisory Visits to Certified Foreign Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: FSIS is proposing to amend its regulations to change the required frequency of foreign inspection system supervisory visits to certified foreign establishments so as to bring FSIS import requirements into agreement with its requirements for domestic establishments. FSIS is proposing to delete the current requirement that supervisory visits take place "not less frequent[ly] than one such visit per month." In its place, FSIS is proposing to require foreign inspection systems to make "periodic supervisory visits" to certified establishments in order to ensure that such establishments continue to meet FSIS requirements for certification to export meat and poultry to the United States.

DATES: Comments must be received on or before October 18, 2004. FSIS invites interested persons to submit comments on this notice.

ADDRESSES: Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD-ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 03–033P.

All comments submitted in response to this Proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm*.

FOR FURTHER INFORMATION CONTACT: Ms. Sally White, Director, International Equivalence Staff, FSIS Office of International Affairs; (202) 720–6400.

SUPPLEMENTARY INFORMATION: The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) place restrictions on imports into the United States that are designed to protect public health. Meat and poultry products can only be exported to the United States from countries with inspection systems that are equivalent to that of the United States, and only if the exported products are safe, otherwise unadulterated, and properly labeled. To ensure that these requirements are met, the Agency evaluates the inspection systems, laws, and regulations of foreign countries to verify that they are equivalent to those of the United States. FSIS conducts audits at least annually to ensure that foreign inspection systems continue to be equivalent. It also re-inspects products offered for import into the United States.

Foreign countries found by FSIS to have equivalent inspection systems are eligible to export products to the United States. It is then the responsibility of the eligible country to certify establishments as meeting the requirements for exporting meat or poultry products to this country and to ensure that products from these establishments are safe, wholesome, and not misbranded.

FSIS applies a number of measures in evaluating a foreign country's inspection system. Among these measures has been a very specific requirement that foreign inspection systems schedule supervisory visits to certified establishments "not less frequent[ly] than one such visit per month." FSIS has noted that this requirement results in more frequent establishment visits than are required by the parallel component of the domestic inspection system.

In the United States, FSIS conducts supervisory visits to USDA-inspected establishments on a regular basis but there is no specific requirement that these visits be conducted monthly. These supervisory visits, termed In-Plant Performance System Reviews, are conducted at federally-inspected establishments as needed to assess the performance of inspection personnel. In-Plant Performance System Reviews help to verify that inspection personnel are performing their regulatory responsibilities in a manner consistent with the governing laws, regulations, and policies. These visits by FSIS supervisors are, however, only one component of inspection supervision. Supervisory contacts with inspection personnel assigned to establishments are also maintained by frequent, sometimes daily, telephone and e-mail communications, by meetings held to correlate inspection activities across an FSIS inspection region (known as a Circuit or District), and by management reports that summarize inspection activities in every federally-inspected establishment.

Several countries that export meat or poultry to the United States have requested that FSIS permit them to schedule their supervisory visits in a manner similar to what is done in the United States. FSIS has not been able to grant these requests, even in circumstances where to do so would be reasonable and equitable, because the current regulatory requirements for foreign supervisory visits are written in a manner that gives the Agency no authority to grant exceptions.

Changing the FSIS regulatory requirement for frequency of foreign supervisory visits will give eligible countries the flexibility to structure their own supervisory program as they deem necessary so as to ensure that establishments continue to meet the requirements for certification to export to the United States. With its routine annual audits, FSIS verifies that equivalent sanitary measures are maintained, and that the regulatory controls of a foreign inspection system are effective. If audit findings indicate that a foreign country's supervisory program is not providing adequate regulatory oversight of certified establishments so as to ensure compliance with U.S. import requirements, FSIS takes appropriate action, including preventing U.S. entry of products from any non-complying

establishment until inadequacies are resolved.

Harmonizing FSIS import requirements with domestic practices would meet U.S. obligations as a signatory to the World Trade Organization (WTO) "Agreement on the Application of Sanitary and Phytosanitary Measures"—commonly called the SPS Agreement. Article 2.3 of the SPS Agreement states that WTO "Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade." The effect of Article 2.3 is that FSIS, acting as a regulatory agency of the United States, may not impose import requirements on inspection systems or establishments in an exporting country that are more stringent than those applied domestically.

Consequently, FSIS proposes to amend 9 CFR 327.2(a)(2)(iv)(A) and 9 CFR 381.196(a)(2)(iv)(A) to provide that supervisory visits by a representative of the foreign inspection system are to occur at periodic intervals to ensure that establishments and products meet the requirements for certification to the United States on an ongoing basis. This change, if adopted, will make the Agency's requirements for foreign inspection programs as consistent as possible with the FSIS domestic inspection program. It will also provide foreign countries with flexibility in structuring their programs.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Economic Impact Analysis

This proposed rule is expected to have no economic impact.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Requirements

No new paperwork requirements are associated with this proposed rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposed rule, FSIS will announce it online through the FSIS web page located at *http://www.fsis.usda.gov.*

The Regulations.gov website is the central online rulemaking portal of the United States Government. It is being offered as a public service to increase participation in the Federal Government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The website is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

List of Subjects

9 CFR Part 327

Imported products.

9 CFR Part 381

Imported poultry products, poultry inspection.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR, parts 327 and 381, as follows:

PART 327—IMPORTED PRODUCTS

1. The authority for part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 327.2(a)(2)(iv)(A) would be amended to read as follows:

§ 327.2 Eligibility of foreign countries for importation of products into the United States.

(a) * * *
(2) * * *
(iv) * * *

(A) Periodic supervisory visits by a representative of the foreign inspection system to each establishment certified in accordance with paragraph (a)(3) of this section to ensure that requirements referred to in paragraphs (a)(2)(ii)(A) through (H) of this section are being met: *Provided,* That such visits are not required with respect to any establishment during a period when the establishment is not operating or is not engaged in producing products for exportation to the United States;

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

Subpart T—Imported Poultry Products

4. Section 381.196(a)(2)(iv)(A) would be amended to read as follows:

§ 381.196 Eligibility of foreign countries for importation of products into the United States.

(a) * * *
(2) * * *
(iv) * * *

(A) Periodic supervisory visits by a representative of the foreign inspection system to each establishment certified in accordance with paragraph (a)(3) of this section to ensure that requirements referred to in paragraphs (a)(2)(ii)(A) through (H) of this section are being met: *Provided,* That such visits are not required with respect to any

establishment during a period when the establishment is not operating or is not engaged in producing products for exportation to the United States;

* * * * *

Done in Washington, DC, on August 12, 2004.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 04–18889 Filed 8–17–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–209, –217, –217A, –217C, and –219 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines. That AD currently requires revisions to the engine manufacturer's time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This proposed AD would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. We are proposing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by October 18, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 98–ANE–43–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On June 18, 2002, the FAA issued airworthiness directive (AD) 2002–13–09, Amendment 39–12797 (67 FR 44527, July 3, 2002), to require revisions to the TLS of the manufacturer's Engine Manuals (EMs) for these engines to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity.

New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate the additional inspection requirements.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT8D–209, –217, –217A, –217C, and –219 turbofan engines of the same type design, the proposed AD would supersede AD 2002–13–09 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

Costs of Compliance

There are about 2,345 Pratt & Whitney JT8D–209, –217, –217A, –217C, and –219 turbofan engines of the affected design in the worldwide fleet. We estimate that 1,143 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 8 work hours per engine to perform the proposed inspections, and that the average labor rate is $65 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $594,360.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify that this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 98–ANE–43–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–12797 (67 FR 44527 July 3, 2002), and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 98–ANE–43–AD. Supersedes AD 2002–13–09, Amendment 39–12797.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by October 18, 2004.

Affected ADs

(b) This AD supersedes AD 2002–13–09.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines. These engines are installed on, but not limited to Boeing 727 and McDonnell Douglas MD–80 series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of JT8D–209, –217, –217A, –217C, and –219 turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Within the next 30 days after the effective date of this AD, (1) revise the Time Limits section (TLS) of the manufacturer's Engine Manual, Part Number 773128, as appropriate for PW JT8D–209, –217, –217A, –217C, and –219 turbofan engines, and (2) for air carriers, revise the approved mandatory inspections section of the continuous airworthiness maintenance program, by adding the following:

"Critical Life Limited Part Inspection

A. Inspection Requirements

(1) This section contains the definitions for individual engine piece-parts and the inspection procedures, which are necessary, when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Section	Inspection No.
Hub (Disk), 1st Stage Compressor:		
Hub Detail—All P/Ns	72–33–31	–02, –03, –04.
Hub Assembly—All P/Ns	72–33–31	–02, –03, –04.
Disk, 13th Stage Compressor—All P/Ns	72–36–47	–02.
HP Turbine, First Stage:		
Rotor Assembly—All P/Ns	72–52–02	–04.
Disk—All P/Ns	72–52–02	–03.
Disk, 2nd Stage Turbine—All P/Ns	72–53–16	–02.
Disk, 3rd Stage Turbine—All P/Ns	72–53–17	–02.
Disk, 4th Stage Turbine—All P/Ns	72–53–18	–02."

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLS and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLS of the manufacturer's engine manual changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLS according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These recordkeeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the TLS as specified in paragraph (f) of this AD, and do not alter or amend the recordkeeping requirements for any other AD or regulatory requirement.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on August 12, 2004.

Ann Mollica,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–18921 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–61–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney (PW) PW2000 series turbofan engines. That AD currently requires revisions to the engine manufacturer's time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This proposed AD would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. We are proposing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by October 18, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–61–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7758, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 98–ANE–61–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On June 4, 2002, the FAA issued airworthiness directive (AD) 2002–12–06, Amendment 39–12778 (67 FR 40143, June 12, 2002), to require revisions to the Time Limits Section (TLS) of the PW2000 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity.

New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the TLS of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate the additional inspection requirements.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other PW2000 series turbofan engines of the same type design, the proposed AD would supersede AD 2002–12–06 to add additional inspection requirements for critical life-limited parts for enhanced inspection at each piece-part opportunity.

Costs of Compliance

There are about 938 Pratt & Whitney PW2000 series turbofan engines of the affected design in the worldwide fleet. We estimate that 777 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 4 work hours per engine to perform the proposed inspections, and that the average labor rate is $65 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, the total additional cost per engine per shop visit is estimated to be $260. Based on the current PW2000 engine shop visit rate, the total additional cost for the PW2000 fleet is estimated to be $80,860 per year.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 98–ANE–61–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–12778, (67 FR 40143 June 4, 2002), and by adding a new airworthiness directive (AD) to read as follows:

Pratt & Whitney: Docket No. 98–ANE–61–AD. Supersedes AD 2002–12–06, Amendment 39–12778.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 18, 2004.

Affected ADs

(b) This AD supersedes AD 2002–12–06.

Applicability

(c) This AD applies to Pratt & Whitney (PW) PW2037, PW2040, PW2043, PW2143, PW2240, PW2337, PW2643, PW2037D, PW2037M, and PW2040D series turbofan engines. These engines are installed on, but not limited to Boeing 757 series and Ilyushin IL–96T series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of PW PW2000 series turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Within 30 days after the effective date of this AD, revise the manufacturer's Time Limits section (TLS) of the manufacturer's engine manual, as appropriate for PW PW2037, PW2040, PW2043, PW2143, PW2240, PW2337, PW2643, PW2037D, PW2037M, and PW2040D series turbofan engines, and for air carriers revise the approved continuous airworthiness maintenance program, by adding the following:

MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in PW2000 Engine Manuals 1A6231 and 1B2412:

Nomenclature	Part No.	EM manual section	Inspection/check	Subtask
Hub, LPC Assembly	ALL	72–31–04	–06.	
Disk, HPT 1st Stage	ALL	72–52–02	FPI entire disk per 72–52–00, Inspection/Check–02.	72–52–02–230–007
Hub, HPT 2nd Stage	ALL	72–52–16	(a) FPI entire hub per 72–52–00, Inspection/Check–02.	72–52–16–230–007
			(b) Eddy current inspect hub bolt holes per 72–52–00, Inspection/Check–05.	72–52–16–200–005
Hub, HPC Front	ALL	72–35–02	–05.	
Disk, HPC Drum Rotor Assembly (7–15)	ALL	72–35–03	–04.	
Disk, HPC Drum Rotor Assembly (16–17)	ALL	72–35–10	–05.	
Disk, HPC 16th Stage	ALL	72–35–06	–04.	
Disk, HPC 17th Stage	ALL	72–35–07	–04.	
HPC Turbine Drive Shaft Assembly	ALL	72–35–08	–05.	
LPC Drive Turbine Shaft	ALL	72–32–01	–06.	
Hub, Turbine Rear	ALL	72–53–81	–06.	
Disk, LPT 3rd stage	ALL	72–53–31	–01.	
Disk, LPT 4th Stage	ALL	72–53–41	–01.	
Disk, LPT 5th Stage	ALL	72–53–51	–01.	
Disk, LPT 6th Stage	ALL	72–53–61	–01.	
Disk, LPT 7th Stage	ALL	72–53–71	–01.	

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual to either part number level listed in the table above, and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLS and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLS of the manufacturer's engine manual changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLS according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with § 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of § 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the TLS as specified in paragraph (f) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on August 11, 2004.

Ann Mollica,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–18919 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–66–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney (PW) PW4000 series turbofan engines. That AD currently requires revisions to the engine manufacturer's time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This proposed AD would modify the airworthiness limitations section of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to add additional inspection requirements for PW4000–94″ engine models only. This proposed AD would also add the PW4062A engine to the applicability. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. We are proposing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by October 18, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–66–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7146, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 98–ANE–66–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

On February 5, 2002, the FAA issued AD 2002–03–08, Amendment 39–12649 (67 FR 7061, February 15, 2002), to require revisions to the Time Limits Section (TLS) of the PW4000 series Turbofan Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity.

New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to add focused eddy current inspections of front compressor hubs on PW4000–94″ engine models.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other PW4000 series turbofan engines of the same type design, the proposed AD would supersede AD 2002–03–08 to add focused eddy current inspections of front compressor hubs on PW4000–94″ engine models to be done at each piece-

part opportunity, and to add the PW4062A engine model to the applicability.

Costs of Compliance

There are about 2,625 Pratt & Whitney PW4000 series turbofan engines of the affected design in the worldwide fleet. We estimate that 600 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 10 work hours per engine to perform the proposed inspections, and that the average labor rate is $65 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, the total additional cost per engine per shop visit is estimated to be $650. Based on the current PW4000 engine shop visit rate, the total additional cost for the PW4000 fleet is estimated to be $123,000 per year.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 98–ANE–66–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–12649, (67 FR 7061, June 4, 2002), and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 98–ANE–66–AD supersedes AD 2002–03–08, Amendment 39–12649.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by October 18, 2004.

Affected ADs

(b) This AD supersedes AD 2002–03–08.

Applicability

(c) This AD applies to Pratt & Whitney (PW) Models PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4650, PW4164, PW4168, PW4168A, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090–3, PW4090D, and PW4098 turbofan engines. These engines are installed on but not limited to, Airbus A300, A310, and A330 series, Boeing 747, 767, and 777 series, and McDonnell Douglas MD–11 series airplanes.

Unsafe Condition

(d) This AD results from the need to add additional inspection requirements for PW4000–94" engine models only, and to add the PW4062A engine to the applicability. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Within the next 60 days after the effective date of this AD, revise the Time Limits Section (TLS) of the Engine Manuals (EMs), part numbers 50A443, 50A605, 50A822, 51A342, 51A345, and 51A751, as applicable, for PW Models PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4650, PW4164, PW4168, PW4168A, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090–3, PW4090D, and PW4098 turbofan turbofan engines, and for air carriers revise the approved continuous airworthiness maintenance program, by adding the following:

MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the PW4000 series Engine Cleaning, Inspection and Repair (CIR) Manuals:

For Engine Manuals 50A443, 50A605, and 50A822, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Hub, Front Compressor	All	72–31–07	Insp/Check–02	51A357
Hub, Turbine, Front Assembly (Stage 1)	All	72–52–05	Insp/Check–02	51A357
Hub, Turbine, Intermediate Rear (Stage 2)	All	72–52–06	Insp/Check–02	51A357

For Engine Manual 51A342, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Hub, LPC Assembly	All	72–31–07	Insp/Check–02	51A357
Hub, Turbine, Front Assembly (Stage 1)	All	72–52–05	Insp/Check–02	51A357
Seal—Air, HPT Stage 2	All	72–52–22	Insp/Check–02	51A357
Hub, Turbine, Rear (Stage 2)	All	72–52–06	Insp/Check–02	51A357

For Engine Manuals 51A345 and 51A751, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Hub, LPC Assembly	All	72–31–07	Insp/Check–02	51A750
Seal—Air, HPT Stage 1	All	72–52–19	Insp/Check–02	51A750
Hub, Turbine, Front Assembly (Stage 1)	All	72–52–05	Insp/Check–02	51A750
Seal—Air, HPT Stage 2 Assembly	All	72–52–22	Insp/Check–02	51A750
Hub, Turbine Rear Assembly (Stage 2)	All	72–52–06	Insp/Check–02	51A750

For Engine Manuals 50A443, 50A605, and 50A822, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
HPC Stage 5 Disk	All	72–35–06	Insp/Check–02	51A357
HPC Front Drum Rotor	All	72–35–07	Insp/Check–02	51A357
HPC Rear Drum Rotor	All	72–35–08	Insp/Check–02	51A357
HPC Rear Drum Rotor	All	72–35–10	Insp/Check–02	51A357

For Engine Manual 51A342, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
HPC Stage 5 Disk	All	72–35–06	Insp/Check–02	51A357
HPC Front Drum Rotor	All	72–35–07	Insp/Check–02	51A357
HPC Rear Drum Rotor	All	72–35–10	Insp/Check–02	51A357

For Engine Manuals 51A345 and 51A751, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
HPC Stage 5 Disk	All	72–35–06	Insp/Check–02	51A750
HPC Front Drum Rotor	All	72–35–07	Insp/Check–02	51A750
HPC Rear Drum Rotor	All	72–35–10	Insp/Check–02	51A750
HPC Stage 15 Disk	All	72–35–92	Insp/Check–02	51A750
HPT Stage 1 Airseal	All	72–52–19	Insp/Check–02	51A750
HPT Front Hub	All	72–52–05	Insp/Check–02	51A750
HPT Stage 2 Airseal	All	72–52–22	Insp/Check–02	51A750
HPT Rear Hub	All	72–52–06	Insp/Check–02	51A750

For Engine Manuals 50A443, 50A605 and 50A822, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	All	72–53–13	Insp/Check–02	51A357
Stage 4 LPT Disk	All	72–53–14	Insp/Check–02	51A357
Stage 5 LPT Disk	All	72–53–15	Insp/Check–02	51A357
Stage 6 LPT Disk	All	72–53–16	Insp/Check–02	51A357

For Engine Manual 51A342, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	All	72–53–13	Insp/Check–02	51A357
Stage 4 LPT Disk	All	72–53–14	Insp/Check–02	51A357
Stage 5 LPT Disk	All	72–53–15	Insp/Check–02	51A357

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Stage 6 LPT Disk	All	72–53–16	Insp/Check–02	51A357
Stage 7 LPT Disk	All	72–53–61	Insp/Check–02	51A357

For Engine Manual 51A345, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	All	72–53–13	Insp/Check–02, Config–1	51A750
Stage 4 LPT Disk	All	72–53–14	Insp/Check–02	51A750
Stage 5 LPT Disk	All	72–53–60	Insp/Check–02	51A750
Stage 6 LPT Disk	All	72–53–16	Insp/Check–02, Config–1	51A750
Stage 7 LPT Disk	All	72–53–72	Insp/Check–02	51A750
Stage 8 LPT Disk	All	72–53–62	Insp/Check–02, Config–1	51A750
Stage 9 LPT Disk	All	72–53–63	Insp/Check–02	51A750

For Engine Manual 51A751, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	All	72–53–13	Insp/Check–02, Config–2 See Note (1).	51A750
Stage 4 LPT Disk	All	72–53–14	Insp/Check–02	51A750
Stage 5 LPT Disk	All	72–53–60	Insp/Check–02	51A750
Stage 6 LPT Disk	All	72–53–16	Insp/Check–02, Config–2 See Note (1).	51A750
Stage 7 LPT Disk	All	72–53–72	Insp/Check–02	51A750
Stage 8 LPT Disk	All	72–53–62	Insp/Check–02, Config–2 See Note (1).	51A750
Stage 9 LPT Disk	All	72–53–63	Insp/Check–02	51A750

(1) FPI method only.

(2) For the purposes of these mandatory inspections; piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual to either part number level listed in the table above, and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLS and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLS of the manufacturer's engine manual changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLS according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the TLS as specified in paragraph (f) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on August 12, 2004.

Ann Mollica,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–18924 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–48–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines. That

AD currently requires revisions to the engine manufacturer's time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This proposed AD would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. We are proposing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by October 18, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–48–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 98–ANE–48–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On August 21, 2002, the FAA issued airworthiness directive (AD) 2002–17–02, Amendment 39–12867 (67 FR 55108, August 28, 2002), to require revisions to the Time Limits Section (TLS) of the manufacturer's Engine Manuals (EMs) for these engines to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity.

New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate the additional inspection requirements.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines of the same type design, the proposed AD would supersede AD 2002–17–02 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

Costs of Compliance

There are about 6,085 Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines of the affected design in the worldwide fleet. We estimate that 3,236 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 8 work hours per engine to perform the proposed inspections, and that the average labor rate is $65 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $1,682,720.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 98–ANE–48–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–12867, (67 FR 55108 August 28, 2002), and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 98–ANE–48–AD. Supersedes AD 2002–17–02, Amendment 39–12867.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by October 18, 2004.

Affected ADs

(b) This AD supersedes AD 2002–17–02.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines. These engines are installed on, but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of PW JT8D series turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Within the next 30 days after the effective date of this AD, (1) revise the Time Limits Section (TLS) of the manufacturer's Engine Manual, Part Number 481672, as appropriate for PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines, and (2) for air carriers, revise the approved mandatory inspections section of the continuous airworthiness maintenance program, by adding the following:

Critical Life Limited Part Inspection

A. Inspection Requirements

(1) This section has the definitions for individual engine piece parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece parts in paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(3) The inspections specified in this paragraph do not replace or make not necessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Section	Inspection No.
Hub (Disk), 1st Stage Compressor:		
Hub Detail—All P/Ns	72–33–31	–02, –03, –04, –05.
Hub Assembly—All P/Ns	72–33–31	–02, –03, –04, –05.
2nd Stage Compressor:		
Disk—All P/Ns	72–33–33	–02, –03.
Disk Assembly—All P/Ns	72–33–33	–02, –03.
Disk, 13th Stage Compressor—All P/Ns	72–36–47	–02.
HP Turbine Disk, First Stage w/integral Shaft—All P/Ns	72–52–04	–03.
HP Turbine, First Stage, w/ separable Shaft:		
Rotor Assembly—All P/Ns	72–52–02	–04.
Disk—All P/Ns	72–52–02	–03.
Disk, 2nd Stage Turbine—All P/Ns	72–53–16	–02.
Disk, 3rd Stage Turbine—All P/Ns	72–53–17	–02.
Disk (Separable), 4th Stage Turbine—All P/Ns	72–53–15	–02.
Disk (Integral Disk/Hub), 4th Stage Turbine—All P/Ns	72–53–18	–02."

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLS and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(h) The Manager, Engine Certification Office, has the authority alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLS of the manufacturer's engine manual changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLS according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the TLS as specified in paragraph (f) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on August 12, 2004.

Ann Mollica,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–18925 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–67–AD]

RIN 2120–AA64

Airworthiness Directives; Ostmecklenburgische Flugzeugbau GmbH Model OMF–100–160 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Ostmecklenburgische Flugzeugbau GmbH (OMF) Model OMF–100–160 airplanes. This proposed AD would require you to inspect the outside tube (cage) that supports the main landing gear leg for cracks, repair if cracks are found, and inspect the thickness of the tube if no cracks were found and reinforce the tube as necessary. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to detect, correct, and prevent future cracks in the outside tube of the main landing gear leg, which could result in structural failure of the fuselage tubing assembly. This failure could lead to loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by September 22, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–67–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–67–AD "in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Ostmecklenburgische Flugzeugbau GmbH, Flughafenstraβe, 17039 Trollenhagen, Federal Republic of Germany.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–67–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: 816–329–4146; facsimile: 816–329–4149.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–67–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain OMF Model OMF–100–160 airplanes. The LBA reports that the manufacturer received a report of cracks in the outside fuselage tube that supports the main landing gear leg. Further investigation revealed that one manufacturer of fuselage tubes used out-of-design dimensions for the tube elements.

What are the consequences if the condition is not corrected? Cracks in the outside tube of the main landing gear leg, if not detected, corrected, and prevented, could result in structural failure of the fuselage tubing assembly. This failure could lead to loss of control of the airplane.

Is there service information that applies to this subject? OMF has issued Alert Service Bulletin No. 1107/0002, dated September 16, 2003.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the tubing that supports the main landing gear leg;
—Inspecting the tube thickness and reinforcing the tube as necessary; and
—Obtaining repair instructions if cracks are found.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number 2003–272, dated October 17, 2003, to ensure the continued airworthiness of these airplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These OMF Model OMF–100–160 airplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other OMF airplanes of the same type design that are registered in the United States, we are proposing AD action to detect, correct, and prevent future cracks in the outside tube of the main landing gear leg. These cracks could result in structural failure of the fuselage tubing assembly and lead to loss of control of the airplane.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 11 airplanes on the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish these proposed inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Inspection for cracks—2 workhours est. $65 per hour = $130	N/A	$130	$1,430
Inspection for inadequate thickness of tubing that supports the main landing gear leg—2 workhours est. $65 the per hour = $130	N/A	130	(1)

[1] OMF will cover the cost for special inspection.

We estimate the following costs to accomplish any necessary repairs that would be required based on the results of these proposed inspections. We have no way of determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
85 workhours X $65 per hour = $5,525	None per manufacturer	$5,525

Regulatory Findings

Would this proposed AD impact various entities? We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–67–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Ostmecklenburgische Flugzeugbau GmbH: Docket No. 2003–CE–67–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by September 22, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model OMF–100–160 airplanes, serial numbers 0006, 0007, 0012 through 0015, 0017, 0018, 0020, 0021, 0024, 0025, 0028, and 0029; that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of cracks in the fuselage tubing assembly and inadequate thickness of tubing that supports the main landing gear leg. The actions specified in this AD are intended to detect, correct, and prevent future cracks in the tubing for the main landing gear leg, which could result in failure of the fuselage tubing assembly. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the main landing gear leg support for cracks	Inspect the airplane within 50 hours time-in-service (TIS) after the effective date of this AD.	Inspect following the procedures in OMF Alert Service Bulletin No. 1107/0002, dated September 16, 2003.
(2) If cracks are found during any inspection required in paragraph (e)(1) or (e)(3)(ii) of this AD, obtain repair instructions from the manufacturer through the FAA and incorporate the repair instructions. This repair eliminates the repetitive inspection requirement of this AD	Repair prior to further flight after the inspection where cracks are found.	Contact an Ostmecklengurgische Flugzeugbau GmbH (OMF) representative at 1–819–377–1177 for repair instructions and incorporate these instructions. Summarize and copy all correspondence and send to FAA at the address specified in paragraph (f) of this AD.

Actions	Compliance	Procedures
(3) If no cracks are found during the inspection required in paragraph (e)(1) of this AD, do the following: (i) inspect tubing for proper thickness and make any appropriate reinforcements (ii) repetitively inspect main landing gear leg support for cracks	Inspect for tubing thickness of the airplane within 50 hours TIS after the initial inspection required in paragraph (e)(1) of this AD. Reinforce prior to further flight after the inspection required in paragraph (e)(3)(i)of this AD. Repetitively inspect main landing gear leg support within 50 hours TIS after the initial inspection required by paragraph (e)(1) of this AD and thereafter at intervals not to exceed 50 hours TIS.	Inspect following procedures in OMF Alert Service Bulletin No. 1107/0002, dated September 16, 2003. Reinforce with instructions from the manufacturer. Contact an Ostmecklengurgische Flugzeugbau GmbH (OMF) representative at 1–819–377–1177 for repair instructions and incorporate these instructions. Summarize and copy all correspondence and send to FAA at the address specified in paragraph (f) of this AD.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: 816–329–4146; facsimile: 816–329–4149.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Ostmecklenburgische Flugzeugbau GmbH, Flughafenstraße, 17039 Trollenhagen, Federal Republic of Germany. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) LBA Airworthiness Directive No. 2003–272, dated October 7, 2003, and OMF Alert Service Bulletin 1107/0002, dated September 16, 2003, pertain to the subject of this AD.

Issued in Kansas City, Missouri, on August 11, 2004.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–18927 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129274–04]

RIN 1545–BD57

Guidance Under Section 1502; Treatment of Loss Carryovers From Separate Return Limitation Years

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and the IRS are issuing temporary regulations providing guidance regarding the treatment of certain losses available to acquired subsidiaries as a result of an election made under the section 1502 regulations. The text of these proposed regulations also serves as the text of the temporary regulations set forth in this issue of the **Federal Register**. These regulations apply to corporations filing consolidated returns.

DATES: Written and electronic comments and requests for a public hearing must be received by November 16, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–129274–04), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:PA:LPD:PR (REG–129274–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–129274–04 or RIN 1545–BD57).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments or requesting a hearing, Treena Garrett, (202) 622–7180; concerning the proposed regulations, Sean McKeever, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1502 of the Internal Revenue Code (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, the IRS will consider any electronic or written comments (a signed original and eight (8) copies) that the IRS timely receives. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Sean McKeever, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1502–32 is amended by revising paragraph (b)(4)(v)(A) and (C).

§ 1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(4) * * *

(v) [The text of this proposed paragraph is the same as the text of § 1.1502–32T(b)(4)(v)(A) and (C) published elsewhere in this issue of the **Federal Register**].

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–18834 Filed 8–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–130863–04]

RIN 1545–BD56

Corporate Reorganizations; Transfers of Assets or Stock Following a Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding the effect of certain transfers of assets or stock on the qualification of certain transactions as reorganizations under section 368(a). This document also contains proposed regulations that provide guidance on the continuity of business enterprise requirement and the definition of a party to a reorganization. These regulations affect corporations and their shareholders.

DATES: Written or electronic comments must be received by November 16, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–130863–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–130863–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–130863–04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jeffrey B. Fienberg, (202) 622–7770; concerning submissions and the hearing, Lanita Van Dyke, (202) 622–3215 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On March 2, 2004, the IRS and Treasury Department published in the **Federal Register** (69 FR 9771) a notice of proposed rulemaking (REG–165579–02) that would amend § 1.368–2(k) to provide that a reorganization otherwise qualifying under section 368(a) will not be disqualified as a result of the transfer or successive transfers to one or more corporations controlled in each transfer by the transferor corporation of part or all of (i) the assets of any party to the reorganization or (ii) the stock of any party to the reorganization other than the issuing corporation (hereinafter the March 2004 proposed regulations). The March 2004 proposed regulations also include amendments to the continuity of business enterprise (COBE) regulations under § 1.368–1(d) and the definition of a party to a reorganization under § 1.368–2(f).

While the March 2004 proposed regulations address transfers of assets and stock to corporations controlled by the transferor corporation, they do not address whether a transaction that otherwise qualifies as a reorganization continues to qualify when, pursuant to the plan of reorganization, assets or stock of the acquired corporation is distributed to a corporation or partnership following the reorganization. In addition, they do not provide guidance on whether a transaction that otherwise qualifies as a reorganization continues to qualify when, pursuant to the plan of reorganization, acquired assets are transferred to a partnership in which the transferor owns an interest. These proposed regulations expand the March 2004 regulations to address these situations.

The IRS and Treasury Department received comments regarding the March 2004 proposed regulations. Comments not addressed in this document are still being considered.

A. Distributions

These proposed regulations provide that a transaction otherwise qualifying as a reorganization under section 368(a) will not be disqualified as a result of a subsequent distribution of the acquired assets or stock if (i) no transferee receives substantially all of the acquired assets, substantially all of the assets of the acquired or surviving corporation in a transaction otherwise qualifying as a reorganization under section 368(a)(1)(B) or section 368(a)(1)(A) by reason of section 368(a)(2)(E), or stock constituting control of the acquired corporation, (ii) the transferee is either a member of the qualified group (as defined in § 1.368–1(d)(4)(ii)) or a partnership the business of which is treated as conducted by a member of the qualified group under § 1.368–1(d)(4)(iii), and (iii) the COBE requirement is satisfied. For this purpose, the term substantially all as used in this regulation has the same meaning as in section 368(a)(1)(C). The IRS and Treasury Department believe that the types of asset and stock distributions described in these

proposed regulations are consistent with the policies underlying the reorganization provisions, which are intended to apply to transactions that effect readjustments of continuing interests in the reorganized business in modified corporate form. See § 1.368–1(b); see also H.R. Rep. No. 83–1337, at A134 (1954) (stating that a corporation may not acquire assets with the intention of transferring them to a stranger).

In the course of developing these proposed regulations, the IRS and Treasury Department considered adopting a rule that would permit a distribution of the acquiring, acquired, or surviving corporation's assets as long as the distribution did not cause that corporation to be treated as liquidating for Federal income tax purposes. However, the IRS and Treasury Department are concerned that such a rule might produce inappropriate results. For example, if a pre-existing acquiring subsidiary in a transaction otherwise qualifying under section 368(a) by reason of section 368(a)(2)(D) distributes all of the acquired assets to the issuing corporation and retains all of the previously held assets, the distribution may not constitute either an actual or de facto liquidation, even though none of the acquired assets remain in the acquiring corporation. It could be argued that this transaction should be treated as a direct acquisition of the acquired assets by the issuing corporation. *See, e.g.*, Rev. Rul. 72–405 (1972–2 C.B. 217).

The IRS and Treasury Department request comments regarding whether a transaction should continue to qualify as a reorganization under section 368(a) if the distribution, including a distribution to which section 355 applies, is to a person that is not a member of the qualified group (as defined in § 1.368–1(d)(4)(ii)) or a partnership the business of which is not treated as conducted by a member of the qualified group under § 1.368–1(d)(4)(iii).

B. Contributions to Partnerships

Currently, the operative rules of § 1.368–2(k) are silent on the effect of a post-transaction transfer of assets or stock to a partnership on a transaction otherwise qualifying as a reorganization. However, *Example 3* of that regulation involves a transfer of acquired stock to a partnership. In the example, P owns 80 percent of the stock of S–1, S–1 owns 80 percent of the stock of S–2, and S–2 owns 80 percent of the stock of S–3. Pursuant to a plan of reorganization, S–1 acquires the stock of T solely in exchange for P voting stock, S–1 transfers the T stock to S–2, and S–2 transfers the T stock to S–3. Also as part of the plan, S–2 and S–3 form PRS, a partnership, and S–3 transfers the T stock to PRS in exchange for an 80 percent partnership interest. The example states that because this transfer to PRS is not described in § 1.368–2(k), the characterization of the transaction must be determined under the relevant provisions of law, including the step transaction doctrine. The transaction therefore fails to qualify as a reorganization under section 368(a)(1)(B) because the acquiring corporation does not have control of T immediately after the acquisition.

The IRS and Treasury Department are studying whether, in the transaction described in *Example 3* of the current § 1.368–2(k), S–1 should be treated as having control of T immediately after the acquisition. Consequently, *Example 3* is not included in these proposed regulations. However, the IRS and Treasury Department recognize that certain transfers to partnerships would cause a transaction to fail the COBE requirement. For example, under the facts of *Example 3* of the current § 1.368–2(k), because T is not a member of the qualified group after the stock transfer to PRS, the transaction would not satisfy the COBE requirement. Comments are requested on whether and how the COBE regulations should be amended to permit stock transfers to partnerships.

C. Effective Date

These regulations are proposed to apply to transactions that occur after the date that these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Jeffrey B. Fienberg of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.368–1 is amended as follows:

1. The text of paragraph (d)(4)(i) is redesignated as paragraph (d)(4)(i)(A) and a paragraph heading is added for (d)(4)(i)(A).

2. Paragraph (d)(4)(i)(B) is added.

3. The text of paragraph (d)(5), introductory text, is redesignated as paragraph (d)(5)(i), and revised.

4. In newly designated paragraph (d)(5)(i), *Examples 7* through *12* are redesignated as *Examples 8* through *13*, respectively.

5. In newly designated paragraph (d)(5)(i), a new *Example 7* is added.

6. In newly designated paragraph (d)(5)(i), paragraph (i) in redesignated *Example 9*, paragraph (i) in redesignated *Example 10*, and the first sentence in paragraph (i) of redesignated *Example 12* are revised.

7. Paragraph (d)(5)(ii) is added.

The revisions and additions read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(d) * * *

(4) * * *

(i) *Business and assets of members of a qualified group*—(A) *In general.* * * *

(B) *Special rule.* The issuing corporation is treated as holding all of the businesses and assets of the surviving corporation after a reorganization that otherwise satisfies the requirements of a reverse triangular merger (as defined in § 1.358–6(b)(2)(iii)), the acquired corporation after a reorganization that otherwise satisfies the requirements of section 368(a)(1)(B), and the acquiring corporation after a reorganization that otherwise satisfies the requirements of a forward triangular merger (as defined in § 1.358–6(b)(2)(i)), a triangular B reorganization (as defined in § 1.358–6(b)(2)(iv)), a triangular C reorganization (as defined in § 1.358–6(b)(2)(ii)), or a reorganization under section 368(a)(1)(G) by reason of section (a)(2)(D), provided that members of the qualified group own, in the aggregate, stock of the surviving, acquired, or acquiring corporation meeting the requirements of section 368(c). This paragraph (d)(4)(i)(B) applies to transactions occurring after the date these regulations are published as final in the **Federal Register**.

* * * * *

(5) *Examples.* (i) The following examples illustrate this paragraph (d). All the corporations have only one class of stock outstanding:

* * * * *

Example 7. (i) *Facts.* The facts are the same as *Example 6*, except that, instead of P acquiring the assets of T, HC acquires all of the outstanding stock of T in exchange solely for voting stock of P. In addition, as part of the plan of reorganization, HC transfers 10 percent of the stock of T to each of subsidiaries S–1 through S–10. T will continue to operate an auto parts distributorship. Without regard to whether the transaction satisfies the COBE requirement, the transaction qualifies as a triangular B reorganization.

(ii) *Continuity of business enterprise.* Under paragraph (d)(4)(i)(B) of this section, P is treated as holding the assets and conducting the business of T because S–1 through S–10, members of the qualified group, together own stock of T meeting the requirements of section 368(c). The COBE requirement of paragraph (d)(1) of this section is satisfied because P is treated as continuing T's business.

* * * * *

Example 9. * * * (i) *Facts.* The facts are the same as *Example 8*, except that S–3 transfers the historic T business to PRS in exchange for a 1 percent interest in PRS.

(ii) * * *

Example 10. * * * (i) *Facts.* The facts are the same as *Example 8*, except that S–3 transfers the historic T business to PRS in exchange for a 33⅓ percent interest in PRS, and no member of P's qualified group performs active and substantial management functions for the ski boot business operated in PRS.

* * * * *

Example 12. * * * (i) *Facts.* The facts are the same as *Example 11*, except that S–1 transfers all the T assets to PRS, and P and X each transfers cash to PRS in exchange for partnership interests. * * *

* * * * *

(ii) *Effective dates.* Paragraph (d)(5) *Example 6* and *Example 8* through *Example 13* apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement that is binding on January 28, 1998, and at all times thereafter. Paragraph (d)(5) *Example 7* applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 3. Section 1.368–2 is amended by:

1. Adding three sentences at the end of paragraph (f).
2. Revising paragraph (j)(3)(ii).
3. Removing the first sentence of paragraph (j)(3)(iii) and adding two new sentences in its place.
4. Revising paragraph (j)(3)(iv).
5. Revising paragraph (k).

The additions and the revision read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(f) * * * If a transaction otherwise qualifies as a reorganization under section 368(a)(1)(B) or as a reverse triangular merger (as defined in § 1.358–6(b)(2)(iii)), the target corporation (in the case of a transaction that otherwise qualifies as a reorganization under section 368(a)(1)(B)) or the surviving corporation (in the case of a transaction that otherwise qualifies as a reverse triangular merger) remains a party to the reorganization even though its stock or assets are transferred in a transaction described in paragraph (k) of this section. If a transaction otherwise qualifies as a forward triangular merger (as defined in § 1.358–6(b)(2)(i)), a triangular B reorganization (as defined in § 1.358–6(b)(2)(iv)), a triangular C reorganization (as defined in § 1.358–6(b)(2)(ii)), or a reorganization under section 368(a)(1)(G) by reason of section 368(a)(2)(D), the acquiring corporation remains a party to the reorganization even though its stock is transferred in a transaction described in paragraph (k) of this section. The two preceding sentences apply to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

(j) * * *

(3) * * *

(ii) Except as provided in paragraph (k) of this section, the controlling corporation must control the surviving corporation immediately after the transaction.

(iii) After the transaction, the surviving corporation must hold substantially all of its own properties and substantially all of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction). The issuing corporation may transfer such properties as provided in paragraph (k) of this section. * * *

* * * * *

(iv) Paragraph (j)(3)(ii) and the first two sentences of paragraph (j)(3)(iii) of this section apply to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**. The remainder of paragraph (j)(3)(iii) of this section applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

* * * * *

(k) *Certain transfers of assets or stock in reorganizations*—(1) *General rule.* A transaction otherwise qualifying as a reorganization under section 368(a) shall not be disqualified as a result of a subsequent transfer (or successive transfers) of assets or stock if—

(i) The transfer is of part or all of—

(A) The assets of any party to the reorganization; or

(B) The stock of any party to the reorganization other than the issuing corporation (as defined in § 1.368–1(b)); and

(ii) Either—

(A) In such subsequent transfer or transfers, a person is not the transferee of—

(*1*) Substantially all (within the meaning of section 368(a)(1)(C)) of the acquired assets;

(*2*) Substantially all (within the meaning of section 368(a)(1)(C)) of the assets of the acquired corporation immediately after a transaction otherwise qualifying as a reorganization under section 368(a)(1)(B);

(*3*) Substantially all (within the meaning of section 368(a)(1)(C)) of the

assets of the surviving corporation immediately after a transaction otherwise qualifying as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E); or

(*4*) Control of the stock of the acquired corporation; or

(B) The transfer is to one or more corporations controlled in each transfer by the transferor corporation or to a partnership in which the transferor has an ownership interest immediately after the transfer; and

(iii) The transferee is either a member of the qualified group (as defined in § 1.368–1(d)(4)(ii)) or a partnership the business of which is treated as conducted by a member of the qualified group under § 1.368–1(d)(4)(iii); and

(iv) The requirements of § 1.368–1(d) are satisfied.

(2) Control is defined under section 368(c).

(3) *Examples.* The following examples illustrate the application of this paragraph (k). Except as otherwise noted, P is the issuing corporation, and T is the target corporation. T operates a bakery that supplies delectable pastries and cookies to local retail stores. The acquiring corporate group produces a variety of baked goods for nationwide distribution. P owns 80 percent of the stock of S–1 and 80 percent of the stock of S–4. S–1 owns 80 percent of the stock of S–2. S–2 owns 80 percent of the stock of S–3, which also makes and supplies pastries and cookies. S–4 owns 80 percent of the stock of S–5. The examples are as follows:

Example 1. Contributions of acquired assets to controlled corporations after a reorganization under section 368(a)(1)(C). (i) *Facts.* Pursuant to a plan of reorganization, T transfers all of its assets to S–1 solely in exchange for P stock, which T distributes to its shareholders. In addition, pursuant to the plan of reorganization, S–1 transfers all of the T assets to S–2, and S–2 transfers all of the T assets to S–3.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(C), is not disqualified by the successive transfers of all of the T assets to S–2 and from S–2 to S–3 because, in each transfer, the transferee corporation is controlled by the transferor corporation, S–2 and S–3 are members of the qualified group, and the transaction satisfies the requirements of § 1.368–1(d).

Example 2. Distribution of acquired assets to the issuing corporation after a reorganization under section 368(a)(1)(C). (i) *Facts.* Pursuant to a plan of reorganization, T transfers all of its assets to S–1 solely in exchange for P stock, which T distributes to its shareholders. In addition, pursuant to the plan of reorganization, S–1 transfers less than substantially all of the T assets to P. T does not have any liabilities.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(C), is not disqualified by the transfer of T assets from S–1 to P because P is transferred less than substantially all of the T assets, P is a member of the qualified group, and the transaction satisfies the requirements of § 1.368–1(d).

Example 3. Contributions of acquired assets to controlled corporations after a reorganization under section 368(a)(1)(D). (i) *Facts.* P owns 100 percent of the stock of T. Pursuant to a plan of reorganization, T transfers all of its assets to S–1 solely in exchange for S–1 stock, which T distributes to P. In addition, pursuant to the plan of reorganization, S–1 transfers all of the T assets to S–2, and S–2 transfers all of the T assets to S–3.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(D), is not disqualified by the successive transfers of all the acquired assets from S–1 to S–2 and from S–2 to S–3 because, in each transfer, the transferee corporation is controlled by the transferor corporation, S–2 and S–3 are members of the qualified group, and the transaction satisfies the requirements of § 1.368–1(d).

Example 4. Contribution of acquiring stock to controlled corporation after a reorganization under section 368(a)(1)(A). (i) *Facts.* Pursuant to a plan of reorganization, S–1 acquires all of the T assets in the merger of T into S–1. In the merger, the T shareholders receive consideration 50 percent of which is P stock and 50 percent of which is cash. Also, pursuant to the plan of reorganization, P transfers all of the S–1 stock to S–4.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D), is not disqualified by the transfer of all of the S–1 stock to S–4 because the transferee corporation is controlled by the transferor corporation, S–4 is a member of the qualified group, and the transaction satisfies the requirements of § 1.368–1(d).

Example 5. Contribution of acquired assets to a partnership after a reorganization under section 368(a)(1)(A). (i) *Facts.* Pursuant to a plan of reorganization, S–1 acquires all of the T assets in the merger of T into S–1. In the merger, the T shareholders receive consideration 50 percent of which is P stock and 50 percent of which is cash. In addition, pursuant to the plan of reorganization, S–1 transfers all of the T assets to PRS, a partnership in which S–1 owns a 33⅓ percent interest. S–1 does not perform active and substantial management functions as a partner with respect to PRS' business.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D), is not disqualified by the transfer of T assets from S–1 to PRS because S–1 has an ownership interest in PRS immediately after the transfer, S–1 is a member of the qualified group and is treated as conducting the business of PRS under § 1.368–1(d)(4)(iii), and the transaction satisfies the requirements of § 1.368–1(d).

Example 6. Distribution of acquired assets to a partnership after a reorganization under section 368(a)(1)(A). (i) *Facts.* P owns an 80 percent interest in PRS, a partnership. PRS owns 20 percent of the stock of S–1. Pursuant to a plan of reorganization, S–1 acquires all of the T assets in the merger of T into S–1. In the merger, the T shareholders receive consideration 50 percent of which is P stock and 50 percent of which is cash. In addition, pursuant to the plan of reorganization, S–1 distributes less than substantially all of the T assets to PRS in redemption of 5 percent of the stock of S–1 owned by PRS.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D), is not disqualified by the transfer of T assets from S–1 to PRS because PRS receives less than substantially all of the T assets, P is a member of the qualified group and is treated as conducting the business of PRS under § 1.368–1(d)(4)(iii), and the transaction satisfies the requirements of § 1.368–1(d).

Example 7. Contributions of acquired stock to controlled corporations after a reorganization under section 368(a)(1)(B). (i) *Facts.* Pursuant to a plan of reorganization, the T shareholders transfer all of their T stock to S–1 solely in exchange for P stock. In addition, pursuant to the plan of reorganization, S–1 transfers 50 percent of the T stock to S–2, and S–2 transfers that T stock to S–3.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(B), is not disqualified by the successive transfers of part of the acquired stock from S–1 to S–2, and from S–2 to S–3 because, in each transfer, the transferee corporation is controlled by the transferor corporation, S–2 and S–3 are members of the qualified group, and the transaction satisfies the requirements of § 1.368–1(d).

Example 8. Contributions of acquiring corporation stock to controlled corporations after a reorganization under section 368(a)(1)(B). (i) *Facts.* Pursuant to a plan of reorganization, the T shareholders transfer all of their T stock to S–1 solely in exchange for P stock. In addition, as part of the plan of reorganization, following the acquisition of T stock by S–1, P transfers 10 percent of the S–1 stock to S–4, and S–4 transfers that S–1 stock to S–5.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(B), is not disqualified by the successive transfers of S–1 stock to S–4 and from S–4 to S–5 because, in each transfer, the transferee corporation is controlled by the transferor corporation, S–4 and S–5 are members of the qualified group, and the transaction satisfies the requirements of § 1.368–1(d).

(4) *Effective date.* This paragraph (k) applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

Deborah M. Nolan,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–18801 Filed 8–17–04; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 570

[BOP Docket No. 1127–P]

RIN 1120–AB27

Community Confinement

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes new rules announcing its categorical exercise of discretion for designating inmates to community confinement when serving terms of imprisonment.

DATES: Comments are due by October 18, 2004.

ADDRESSES: Our email address is *BOPRULES@BOP.GOV*. Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov*. You may also comment via the Internet to BOP at *BOPRULES@BOP.GOV* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The proposed rules would, as a matter of policy, limit the amount of time that inmates may spend in community confinement (including Community Corrections Centers (CCCs) and home confinement) to the last ten percent of the prison sentence being served, not to exceed six months. The only exceptions to this policy are for inmates in specific statutorily-created programs that authorize greater periods of community confinement (for example, the residential substance abuse treatment program (18 U.S.C. 3621(e)(2)(A)) or the shock incarceration program (18 U.S.C. 4046(c)). The Bureau announces these rules as a categorical exercise of discretion under 18 U.S.C. 3621(b).

Before December 2002, the Bureau operated under the theory that 18 U.S.C. 3621(b) created broad discretion to place inmates in any prison facilities, including CCCs, as the designated places to serve terms of "imprisonment." Under that theory, the Bureau generally accommodated judicial recommendations for initial CCC placements of non-violent, low-risk offenders serving short prison sentences. Consequently, before December 2002, it was possible for such inmates to serve their entire terms of "imprisonment" in CCCs.

On December 13, 2002, the Department of Justice's Office of Legal Counsel (OLC) issued a memorandum concluding that the Bureau could not, under 18 U.S.C. 3621(b), generally designate inmates to serve terms of imprisonment in CCCs. OLC concluded that, if the Bureau designated an offender to serve a term of imprisonment in a CCC, such designation unlawfully altered the actual sentence imposed by the court, transforming a term of imprisonment into a term of community confinement. OLC concluded that such alteration of a court-imposed sentence exceeds the Bureau's authority to designate a place of imprisonment. OLC further opined that if section 3621(b) were interpreted to authorize unlimited placements in CCCs, that would render meaningless the specific time limitations in 18 U.S.C. 3624(c), which limits the amount of time an offender sentenced to imprisonment may serve in community confinement to the last ten percent of the prison sentence being served, not to exceed six months. By memorandum dated December 16, 2002, the Deputy Attorney General adopted the OLC memorandum's analysis and directed the Bureau to conform its designation policy accordingly.

Thus, effective December 20, 2002, the Bureau changed its CCC designation procedures by prohibiting Federal offenders sentenced to imprisonment from being initially placed into CCCs rather than prison facilities. The Bureau announced that, as part of its procedures change, it would no longer honor judicial recommendations to place inmates in CCCs for the imprisonment portions of their sentences. Rather, the Bureau would now limit CCC designations to pre-release programming only, during the last ten percent of the prison sentence being served, not to exceed six months, in accordance with 18 U.S.C. 3624(c).

The Bureau's change was challenged in the Federal courts. District courts addressing the legality of the Bureau's changed policy have been sharply divided. Some courts have upheld the policy, *see, e.g., Cohn* v. *Federal Bureau of Prisons*, 2004 WL 240570 (S.D.N.Y., Feb. 10, 2004); *Benton* v. *Ashcroft*, 273 F. Supp. 2d 1139 (S.D. Cal. 2003); while others have rejected it, *see, e.g., Monahan* v. *Winn*, 276 F. Supp. 2d 196 (D. Mass. 2003); *Iacoboni* v. *United States*, 251 F. Supp. 2d 1015 (D. Mass. 2003); *Byrd* v. *Moore*, 252 F. Supp. 2d 293 (W.D.N.C. 2003). The courts that disagreed with the re-interpretation concluded that 18 U.S.C. 3621(b) grants the Bureau broad discretion to designate offenders to any facility, including CCCs. *See, e.g., Iacaboni*, 251 F. Supp. 2d at 1025; *Byrd*, 252 F. Supp. 2d at 300–01. *But see Cohn*, 2004 WL 240570 at *3 ("the BOP's interpretation that a CCC is not a place of imprisonment, and therefore not subject [to] Congress' general grant of discretion to the BOP under § 3621(b), is at a minimum a permissible interpretation of the statute").

Because various courts have held that the Bureau has discretion under 18 U.S.C. 3621(b) to place offenders sentenced to a term of imprisonment in CCCs, the Bureau considers it prudent to determine how to exercise such discretion. Accordingly, the Bureau has considered how to exercise that discretion in a manner consistent with the text of Section 3621(b), Congressional objectives reflected in related statutory provisions, and the policy determinations of the U.S. Sentencing Commission expressed in the U.S. Sentencing Guidelines. Based on those considerations, the Bureau has determined to exercise its discretion categorically to limit inmates' community confinement to the last ten percent of the prison sentence being served, not to exceed six months. This categorical exercise of discretion is permissible based on the Supreme Court's recognition that, even when a statutory scheme requires individualized determinations, the decisionmaker has authority to rely on rulemaking to resolve certain issues of general applicability (unless Congress clearly expresses an intent to withhold that authority). See *Lopez* v. *Davis*, 531 U.S. 227, 243–44 (2001); *American Hospital Association* v. *NLRB*, 499 U.S. 606, 612–13 (1991). The Bureau will continue to make a case-by-case determination of the particular prison facility (*i.e.*, non-community-confinement facility) to which it will designate each individual inmate.

Section 3621(b) authorizes the Bureau to designate as the place of a prisoner's imprisonment any available facility that meets minimum standards of health and habitability "that the Bureau determines to be appropriate and suitable." 18 U.S.C. 3621(b). Section 3621(b) provides a nonexclusive list of factors that the Bureau is to consider in determining what facilities are "appropriate and suitable," including (1) the resources of the facility; (2) the nature and circumstances of the offense; (3) the

history and characteristics of the prisoner; (4) any statement by the sentencing court about the purposes for which the sentence of imprisonment was determined to be warranted or recommending a type of penal or correctional facility as appropriate; and (5) any pertinent policy statement issued by the Sentencing Commission under 28 U.S.C. 994(a)(2). The statute further commands that "there shall be no favoritism given to prisoners of high social or economic status" in Bureau designation decisions. 18 U.S.C. 3621(b). The legislative history makes clear that, although the listed factors are "appropriate" for the Bureau to consider, Congress did not intend, by listing some considerations," "to restrict or limit the Bureau in the exercise of its existing discretion." S. Rep. 225, 98th Cong., 1st Sess. 142 (1983). In addition to the listed factors, the Bureau has determined that it is appropriate to consider the policies of the Sentencing Commission reflected in Sentencing Guidelines (as well as policy statements promulgated under 28 U.S.C. 994(a)(2)) and congressional policies reflected in related statutory provisions.

In deciding to limit inmates' community confinement to the last ten percent of the prison sentence, not to exceed six months, the Bureau has carefully considered all of the statutorily-specified factors, as well as the additional considerations that it identified as pertinent. The Bureau viewed the following considerations as most significant:

- These proposed rules promote consistency in the Bureau's designation of inmates to places of confinement. Congress, in enacting 18 U.S.C. 3621(b), codified its intent that the Bureau not show favoritism in making designation decisions: "In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status." 18 U.S.C. 3621(b). Indeed, eliminating unwarranted disparities in sentencing was a primary purpose of the Sentencing Reform Act of 1984. *See* S. Rep. No. 225, 98th Cong., 1st Sess. 52 (1983). However, the Bureau's system before December 2002, which allowed individualized CCC decisions for each inmate upon initial prison designation, created the possibility that it would unintentionally treat similar inmates differently. These differences in treatment would not only be unfair to the inmates, but they "could invite [charges of intentional] favoritism, disunity, and inconsistency" against the Bureau. *Lopez*, 531 U.S. at 244. These proposed rules promote Congress' goal of eliminating unwarranted disparities in the sentencing and handling of inmates and also eliminate any concern that the Bureau might use community confinement to treat specific inmates leniently.
- The proposed rules are also consistent with Section 3621(b)'s instruction that the Bureau consider facility resources in making designation determinations. 18 U.S.C. 3621(b)(1). Based on its experience, the Bureau has concluded that the resources of CCCs make them particularly well suited as placement options for the final portion of offenders' prison terms. CCCs offer increased community access and greater integration with the community. As Congress has itself recognized, those characteristics of CCCs mean that they "afford the prisoner a reasonable opportunity to adjust to and prepare for the prisoner's re-entry into the community." 18 U.S.C. 3624(c). By ensuring that offenders sentenced to prison terms not be placed in CCCs except during the last ten percent of their prison sentences (not to exceed six months), the proposed rules will help ensure that CCCs remain available to serve the purposes for which their resources make them best suited.
- These proposed rules are supported by the Bureau's statutory obligation to consider "any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2)." 18 U.S.C. 3621(b)(5). Although guidelines, which are promulgated under 28 U.S.C. 994(a)(1), are distinct from policy statements promulgated under Section 994(a)(2), the Bureau believes that both reflect sentencing policy determinations made by the Sentencing Commission and therefore that the Bureau should also take cognizance of guidelines in making placement designations. Under Sentencing Guideline 5C1.1, where a sentence of imprisonment is required for defendants whose guidelines range falls within Zones B or C of the Sentencing Table, the Guideline authorizes "community confinement" only as a condition of supervised release that substitutes such confinement pursuant to a schedule set forth in the Guideline (or as a condition of probation). *See* USSG § 5C1.1(c) and (d). That Guideline thus reflects the Commission's policy determination generally to restrict the availability of community confinement in lieu of imprisonment to those situations. Federal case law decisions have supported this conclusion by finding that "imprisonment" portions of split-sentences under USSG § 5C1.1(c) and (d) cannot be satisfied through "community confinement." *See, e.g., United States* v. *Adler*, 52 F.3d 20, 21 (2d Cir. 1995); *United States* v. *Swigert*, 18 F.3d 443, 445 (7th Cir. 1994); *United States* v. *Serafini*, 233 F.3d 758, 762 n.2, and 777–78 (3d Cir. 2000). Additionally, because the term "imprisonment" is used without further qualifications throughout USSG § 5C1.1, the Bureau has no basis for believing that the Commission contemplated "community confinement" as an option in any other "imprisonment" sentence context. The Bureau has determined to consider the Commission's expressed distinction in this area and to make facility-designation decisions in a fashion that is consistent with, rather than frustrates, the Commission's policy determinations.
- These rules are also supported by consideration of the congressional sentencing policy as reflected in related statutory provisions. Most significant, 18 U.S.C. 3624(c) requires the Bureau to ensure that inmates spend the final portion of their prison sentences "under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for the prisoner's re-entry into the community." 18 U.S.C. 3624(c). Congress clearly indicated its preference that such conditions exist during the last ten percent of the prison sentence being served, not to exceed six months. *Id.* Whether or not Section 3624(c) precludes the Bureau from designating a prisoner to community confinement for longer than the lesser of the last ten percent of the sentence or six months, it is consistent with the congressional policy reflected in that section for the Bureau to exercise its discretion to decline to designate a prisoner to community confinement for longer than that time period.

In addition to furthering the sentencing policy reflected in Section 3624(c), the proposed rules further Congress' determination that one of the important purposes of sentencing is to deter criminal conduct. *See* 18 U.S.C. 3553(a)(2)(B). The Supreme Court has long sustained the theory that one purpose of criminal law is to deter future crimes. *See, e.g., U.S.* v. *Benskin*, 926 F.2d 562, 567 (6th Cir. 1991). The degree to which the facility designation could undermine the deterrent effect of imprisonment sentences is a legitimate factor for the Bureau to consider in making specific facility designations. Because of a CCC's decreased security, and increased community access, a potential offender might reasonably perceive community confinement as a more lenient punishment than designation to a prison facility. That view, in turn, could affect a potential

offender's calculus of the costs and benefits of committing a crime. Consequently, the perceived lenient treatment that may have occurred under the Bureau's system before December 2002—allowing terms of imprisonment to initially be served in CCCs—risked eroding Congress's goal of deterring criminal activity. These rules will ensure the Bureau's designation policy does not undermine the deterrent role that Congress intends Federal criminal law to serve.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534; or via e-mail to *BOPRULES@BOP.GOV*.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

BOP has assessed the costs and benefits of this rule as required by Executive Order 12866 section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of eliminating confusion in the courts that has been caused by the change in the Bureau's statutory interpretation, while allowing us to continue to operate under revised statutory interpretation. There will be no new costs associated with this rulemaking.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 570

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 570 as set forth below.

Subchapter D—Community Programs and Release

PART 570—COMMUNITY PROGRAMS

1. Revise the authority citation for 28 CFR part 570 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Amend part 570 by adding subpart B, consisting of §§ 570.20 and 570.21 to read as follows:

Subpart B—Community Confinement

Sec.

§ 570.20 What is the purpose of this subpart?

(a) This subpart provides the Bureau of Prisons' (Bureau) categorical exercise of discretion for designating inmates to community confinement. The Bureau designates inmates to community confinement only as part of pre-release custody and programming which will afford the prisoner a reasonable opportunity to adjust to and prepare for re-entry into the community.

(b) As discussed in this subpart, the term "community confinement" includes Community Corrections Centers (CCC) (also known as "halfway houses") and home confinement.

§ 570.21 When will the Bureau designate inmates to community confinement?

(a) The Bureau will designate inmates to community confinement only as part of pre-release custody and programming, during the last ten percent of the prison sentence being served, not to exceed 6 months.

(b) We may exceed these time-frames only when specific Bureau pre-release programs allow greater periods of community confinement, as provided by separate statutory authority (for example, residential substance abuse treatment program (18 U.S.C. 3621(e)(2)(A)), or shock incarceration program (18 U.S.C. 4046(c)).

[FR Doc. 04–18747 Filed 8–17–04; 8:45 am]
BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–MN–0001, FRL–7794–6]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Sulfur Dioxide; United Defense

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to Minnesota's State Implementation Plan (SIP) for Sulfur Dioxide (SO_2) for the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minnesota. This revision replaces the Administrative Order, originally issued

to the facility on May 27, 1992, with a Title V permit containing non-expiring Title I SIP conditions, issued on November 25, 2002. The Minnesota Pollution Control Agency (MPCA) submitted this SIP revision on December 19, 2002. In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to that direct final rule, EPA plans to take no further action on this proposed rule. If EPA receives significant adverse comments, in writing, which EPA has not addressed, EPA will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 17, 2004.

ADDRESSES: Submit comments, identified by Docket ID No. R05–OAR–2004–MN–0001 by one of the following methods: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. R05–OAR–2004–MN–0001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please contact Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767. *dagostino.kathleen@epa.gov*

SUPPLEMENTARY INFORMATION:

A. Does This Action Apply to Me?

This action is rulemaking on a Sulfur Dioxide plan for the United Defense, LP facility located in Anoka County.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

Additional Information

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register.** Copies of the request and the EPA's analysis are available electronically at EDOCKET or in hard copy at the above address. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

Dated: July 19, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 04–18765 Filed 8–17–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding for the Resubmitted Petition To List the Black-Tailed Prairie Dog as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Finding on a resubmitted petition.

SUMMARY: We, the Fish and Wildlife Service (Service), announce our resubmitted 12-month petition finding for the black-tailed prairie dog (*Cynomys ludovicianus*). We conclude that the black-tailed prairie dog is not likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, pursuant to the Endangered Species Act (Act) of 1973, as amended. Therefore, we find that proposing a rule to list the species is not warranted, and we no longer consider it to be a candidate species for listing. We make this determination because recent distribution, abundance, and trend data indicate that the threats to the species identified in the 12-month finding are not as serious as earlier believed.

DATES: This finding was made on August 12, 2004. Although no further action will result from this finding, we request that you submit new information concerning the status of, or threats to, this species, whenever it becomes available.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours, at the South Dakota Field Office, U.S. Fish and Wildlife Service, 420 S. Garfield Avenue, Suite 400, Pierre, South Dakota 57501. Submit new information, materials, comments, or questions concerning this species to us at the above address. You may obtain a copy of our species assessment for the black-tailed prairie dog on the Internet at *http://mountain-prairie.fws.gov/species/mammals/btprairiedog/* or by contacting the South Dakota Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Pete Gober, at the South Dakota Field Office, (see **ADDRESSES** section above), by telephone at (605) 224–8693, extension 24, by facsimile at (605) 224–9974, or by e-mail *Pete_Gober@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act requires that within 12 months after receiving a petition to revise the List of Endangered and Threatened Wildlife that contains substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings—(a) The petitioned action is not warranted, (b) the petitioned action is warranted, or (c) the petitioned action is warranted but precluded by pending proposals. Such 12-month findings are to be published promptly in the **Federal Register.** The Act also requires that when a warranted but precluded finding is made, a petition is treated as resubmitted and the Service is required to publish a new petition finding on an annual basis.

On July 31, 1998, the Service received a petition dated July 30, 1998, from the National Wildlife Federation (NWF) (1998). The petitioner requested that the Service list the black-tailed prairie dog (*Cynomys ludovicianus*) as threatened throughout its range. On August 26, 1998, the Service received another petition regarding the black-tailed prairie dog from the Biodiversity Legal Foundation, the Predator Project, and Jon C. Sharps (Biodiversity Legal Foundation *et al.* 1998). The Service accepted this second petition as supplemental information to the NWF petition. A notice of a 90-day finding for the petition was published in the **Federal Register** on March 25, 1999 (64 FR 14425), indicating that it and other readily available scientific and commercial information presented substantial information that the petitioned action may be warranted. On February 4, 2000, the Service announced a 12-month finding that listing the black-tailed prairie dog as a threatened species was warranted but precluded by other higher priority actions (65 FR 5476). When we find that a petition to list a species is warranted but precluded, we refer to the species as being a candidate for listing.

Section 4(b)(3)(B) of the Act directs that, when we make a "warranted but precluded" finding on a petition, we are to treat the petition as being one that is resubmitted annually on the date of the finding; thus the Act requires us to reassess the petitioned actions and to publish a finding on the resubmitted petition on an annual basis. Two previous candidate assessments and resubmitted petition findings for this species were completed February 7, 2001, (66 FR 54808, October 30, 2001) and March 18, 2002 (67 FR 40657, June 13, 2002) (2001 Candidate Assessment, and 2002 Candidate Assessment respectively). These assessments are available at *http://mountain-prairie.fws.gov/btprairiedog/*. In our most recent Notice of Findings on Resubmitted Petitions, we noted that we had not yet updated our finding with regard to the black-tailed prairie dog (69 FR 24876, May 4, 2004). We noted that, since our 2002 assessment, we had received significant new information about this species from the NWF, Forest Guardians, and the States of Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. We stated that we were considering this new information and intended to publish a finding for this species upon completing our new assessment. This resubmitted 12-month finding is based on consideration of all new information that we have received since 2002. It presents evaluations of this new information and re-evaluations of previously acquired information. In accordance with section 4(b)(3)(B) of the Act, we have now completed a status review of the best available scientific and commercial information on the species, and have reached a determination regarding the petitioned action.

Species Information

Prairie dogs occur only in North America. They are rodents within the squirrel family (Sciuridae) and include five species—the black-tailed prairie dog; the white-tailed prairie dog (*C. leucurus*); the Gunnison's prairie dog (*C. gunnisoni*); the Utah prairie dog (*C. parvidens*); and the Mexican prairie dog (*C. mexicanus*) (Pizzimenti 1975). The Utah and Mexican prairie dogs are currently listed as threatened (49 FR 22339, May 29, 1984) and endangered (35 FR 8495, June 2, 1970), respectively. Generally, the black-tailed prairie dog occurs east of the other four species in more mesic habitat. Based upon the information currently available, the Service concurs with Pizzimenti's (1975) assessment of the black-tailed prairie dog as monotypic.

Prairie dogs are small, stout ground squirrels. The total length of an adult black-tailed prairie dog is approximately 37 to 43 centimeters (14 to 17 inches) and the weight of an individual ranges from 0.5 to 1.4 kilograms (1 to 3 pounds). Individual appearances within the species vary in mixed colors of brown, black, gray, and white. The black-tipped tail is characteristic

(Hoogland 1995). Black-tailed prairie dogs are diurnal, burrowing animals. They do not hibernate as do white-tailed, Gunnison's, and Utah prairie dogs (Hoogland 1995, Tileston and Lechleitner 1966). The black-footed ferret (*Mustela nigripes*), swift fox (*Vulpes velox*), mountain plover (*Charadrius montanus*), ferruginous hawk (*Buteo regalis*), burrowing owl (*Athene cunicularia*), and numerous other species are dependent upon prairie dogs to varying degrees.

Several biological factors determine the reproductive potential of the species. Females may breed in their first year, but usually do not breed until their second year, live 3 to 4 years, and produce a single litter, usually four to five pups, annually (Hoogland 1995; Hoogland 2001; King 1955; Knowles and Knowles 1994). Therefore, 1 female may produce 0 to 20 young in its lifetime. While the species is not prolific in comparison to many other rodents, the species is capable of rapid population increases subsequent to substantial reductions (Seery, U.S. Forest Service (USFS), in litt. 2001).

Historically, black-tailed prairie dogs generally occurred in large colonies that contained thousands of individuals, covered hundreds or thousands of acres, and extended for miles (Bailey 1905). At present, most colonies are much smaller. Colonial behavior offers an effective defense mechanism by aiding in the detection of predators and by deterring predators through mobbing behavior. It increases reproductive success through cooperative rearing of juveniles and aids parasite removal via shared grooming. Colonial behavior also can play an important role in the transmission of disease (Antolin *et al.* 2002; Biggins and Kosoy 2001; Hoogland 1995; Olsen 1981). The role of colonial behavior in the transmission of disease is discussed in more detail below (see Factor C).

Black-tailed prairie dog colonies can combine to form a complex, or metapopulation, with interchange occurring between colonies. Typical dispersal is usually between established colonies and limited to approximately 5 kilometers (3 miles) or less (Garrett and Franklin 1988, Hoogland 1995); although Knowles (1985) noted occasional long-distance dispersal distances as high as 10 kilometers (6 miles). Black-tailed prairie dog complexes or metapopulations expand or contract depending upon various intrinsic factors (*e.g.*, reproductive capabilities) and extrinsic factors (*e.g.*, chemical control). In order to substantially augment or replace populations, several individuals must migrate between colonies. However, only a very few individuals are required for useful genetic exchange.

Distribution, Abundance, and Trends

The historic range of the black-tailed prairie dog included portions of 11 States, Canada, and Mexico. The species is currently present in 10 States—Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. It has been extirpated from Arizona. Black-tailed prairie dogs occur from extreme south-central Canada to northeastern Mexico and from approximately the 98th meridian west to the Rocky Mountains. Range contractions have occurred in the southwestern portion of the species' range in Arizona, western New Mexico, and western Texas through conversion of grasslands to desert shrub lands (Pidgeon *et al.* 2001). Range contractions are largely due to habitat destruction through cropland development in the eastern portion of the species' range in Kansas, Nebraska, Oklahoma, South Dakota, and Texas (Black-footed Ferret Recovery Foundation, in litt. 1999a).

Populations in Canada represent approximately 0.1 percent of the current North American populations. The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) has considered the black-tailed prairie dog vulnerable since 1978 due to its restricted distribution. This status was reconfirmed in 1998 (COSEWIC 1998). Populations in Mexico represent approximately 2.7 percent of the current North American populations. These populations have been reduced, largely due to control efforts and agricultural conversion (Ceballos *et al.* 1993). The species is considered threatened in Mexico (Secretaria del Medio Ambiente, Recursos Naturales y Pesca (SEMARNAP) (Environment, Natural Resources and Fishing Secretary) 1994).

Most estimates of prairie dog populations are not based on numbers of individual animals, but on estimates of the amount of occupied habitat. The actual number of animals present depends upon the prevailing density of animals in that locality. Estimates of black-tailed prairie dog density vary depending upon the season, region, and climatic conditions; but typically range from 5 to 45 individuals per hectare (2 to 18 individuals per acre) (Fagerstone and Ramey 1996; Hoogland 1995; King 1955; Koford 1958; Miller *et al.* 1996). Density also can vary temporally, due to chemical control and plague, as discussed in later sections. Most prairie dog surveys do not estimate density because of the associated effort and cost. The Service believes that estimates of black-tailed prairie dog occupied habitat provide the best available and most reasonable means of gauging populations and the status of the species across the extensive range of the species.

Since the 12-month finding in 2000, all States, with the exception of Montana, have completed Statewide surveys based on occupied habitat. These efforts were systematically designed and implemented, although methodologies varied between States. We believe that the current Statewide estimates are likely more accurate than those provided in the 12-month finding, which were largely based on earlier data, extrapolation of partial surveys, telephone surveys, and desktop exercises. Collectively, the recent estimates represent the first broad benchmark of comparison for black-tailed prairie dog populations since the early 1960s (Bureau of Sport Fisheries and Wildlife (BSFW) 1961).

ARIZONA—The black-tailed prairie dog has been extirpated from Arizona. No additional information regarding distribution, abundance, and trends of the species in Arizona has been obtained since the 12-month finding.

COLORADO—The Colorado Division of Wildlife (CDOW) reported a Statewide estimate of 256,000 hectares (631,000 acres) of black-tailed prairie dog occupied habitat based on an aerial inventory (Pusateri, CDOW, in litt. 2002; Russell, CDOW, in litt. 2003). Thirty-eight complexes were identified Statewide. The methodology employed by CDOW is comprehensive and based on an aerial transect method developed by Sidle *et al.* (2001) and modified by White (CDOW 2003). The Service estimate (based upon a sum of site-specific estimates and extrapolations) in the 2000 12-month finding was 38,000 hectares (93,000 acres) of occupied habitat. The 1961 BSFW estimate was about 39,000 hectares (96,000 acres). A mail survey estimate reported by Colorado Department of Agriculture (1990) was about 394,000 hectares (973,000 acres) of occupied habitat.

The CDOW (2003) identifies 18 extant complexes greater than 2,000 hectares (5,000 acres). More than 10 percent of the total occupied acreage in Colorado occurs in complexes greater than 400 hectares (1,000 acres). The most recent inventory indicates that the black-tailed prairie dog remains widely distributed in Colorado with 100 percent of the counties within the historic range still containing prairie dogs (CDOW 2003).

Trend information at some Colorado sites indicates declines due to plague

with at least partial recovery in subsequent years. At the Rocky Mountain Arsenal, plague has resulted in a substantial overall decline in occupied habitat from 250 hectares (1,646 acres) in 2000 to 127 hectares (314 acres) in 2002 (Seery, Service, in litt. 2002). However, at Comanche National Grasslands (NG), occupied habitat appears to have returned to pre-plague levels following epizootics. Cully and Johnson (2002) estimated 2,382 hectares (5,886 acres) of occupied habitat at Comanche NG, a 42 percent increase from 2001. Occupied habitat at Pawnee NG in 2002 was reported at about 730 hectares (1,800 acres), a 65 percent increase from 2001 (Cully and Johnson 2002). Hoefert (U.S. Army, in litt. 2002) reported 1,418 hectares (3,500 acres) of occupied habitat at Fort Carson, a 109 percent increase from 2001. Estimates for Pueblo and Pinon Canyon in 2002 were similar to those in 2001 with 1,066 hectares (2,632 acres) at Pueblo Army Depot and 143 hectares (353 acres) at Pinon Canyon Maneuver Site.

KANSAS—Based on recent aerial surveys, Kansas Department of Wildlife and Parks (KDWP) estimated there are about 53,000 hectares (130,000 acres) of black-tailed prairie dog occupied habitat in Kansas (Mitchener, KDWP, in litt. 2003). The Service estimate (based upon a mean of previous estimates) in the 2000 12-month finding was 17,000 hectares (42,000 acres). The 1961 BSFW estimate was about 20,000 hectares (50,000 acres).

There are no extant complexes greater than 2,000 hectares (5,000 acres) in Kansas. One complex is greater than 400 hectares (1,000 acres). Less than 10 percent of the total occupied acreage in Kansas occurs in complexes greater than 400 hectares (1,000 acres). The black-tailed prairie dog appears to be largely absent from eastern portions of its historic range in Kansas. Nevertheless, more than 75 percent of the counties within the historic range of the species contain prairie dogs (Luce, Prairie Dog Conservation Team Interstate Coordinator, in litt. 2002c).

For specific sites, Cully and Johnson (2002) estimated 1,344 hectares (3,321 acres) at Cimarron NG. This was an increase of 26 percent from 2001.

MONTANA—The Montana Department of Fish, Wildlife and Parks (MDFWP) provided a Statewide estimate (including Tribal lands) of 36,000 hectares (90,000 acres) of black-tailed prairie dog occupied habitat in 2002 (Hagener, MDFWP, in litt. 2002). This estimate is the same as that in the 2002 candidate assessment. The Service estimate (based upon Knowles 1998) in the 2000 12-month finding was 26,000 hectares (65,000 acres). The 1961 BSFW estimate was about 11,000 hectares (28,000 acres). In 2003, Hagener (MDFWP, in litt. 2003) noted that most areas in Montana show expansion of black-tailed prairie dog occupied habitat.

There are three extant complexes greater than 2,000 hectares (5,000 acres). More than 10 percent of the total acreage in Montana occurs in complexes greater than 400 hectares (1,000 acres). Black-tailed prairie dog populations appear to be widely distributed in Montana with 90 percent of the historic range occupied by the species (Montana Prairie Dog Working Group 2001).

For specific sites, Vosburgh (Intertribal Consortium, in litt. 2003) estimated about 3,000 hectares (7,000 acres) of black-tailed prairie dog occupied habitat at Crow Reservation in Montana. Approximately 80 percent of Reservation lands have been mapped, so the actual amount of occupied habitat may be larger. Vosburgh (Intertribal Consortium, in litt. 2002) and Hagener (MDFWP, in litt. 2002) both noted a 1,200 to 1,600 hectares (3,000 to 4,000 acres) reduction in occupied habitat on Crow Reservation lands during 2002 due to plague. Both sources also estimated nearly 5,300 hectares (13,000 acres) of occupied habitat at Fort Belknap Reservation, a decrease of about 600 hectares (1,200 acres) from the 1999 estimate due to plague. Additionally, Vosburgh (Intertribal Consortium, in litt. 2003) estimated 1,585 hectares (3,913 acres) of occupied habitat at the Northern Cheyenne Reservation, an increase of about 240 hectares (600 acres) from the previous estimate in 2002. Hagener (MDFWP, in litt. 2003) estimated 2,600 hectares (6,300 acres) on Charles M. Russell National Wildlife Refuge in 2002. Trend information over the last 10 to 20 years at most large sites in the State continues to indicate declines due to plague, with partial recovery in subsequent years, but without complete recovery to pre-plague levels.

NEBRASKA—Statewide, the Nebraska Game and Parks Commission (NGPC) estimated 55,000 hectares (137,000 acres) of black-tailed prairie dog occupied habitat in 2003 (Fritz, NGPC, pers. comm. 2004). This estimate is derived from aerial surveys employing the same methodology used by CDOW. The Service estimate (based upon Amack, NGPC, in litt. 1998 and Knowles 1998) in the 2000 12-month finding was 24,000 hectares (60,000 acres) of occupied habitat. The 1961 BSFW estimate was about 12,000 hectares (30,000 acres).

There are no extant complexes greater than 2,000 hectares (5,000 acres) in Nebraska. One complex is greater than 400 hectares (1,000 acres). Less than 10 percent of the total occupied acreage in Nebraska occurs in complexes greater than 400 hectares (1,000 acres). The black-tailed prairie dog appears to be largely absent from eastern portions of its historic range in Nebraska. Nevertheless, more than 75 percent of the counties within the historic range of the species contain prairie dogs (Luce, Prairie Dog Conservation Team Interstate Coordinator, in litt. 2003).

For specific sites in Nebraska, 40 hectares (100 acres) of black-tailed prairie dog occupied habitat were estimated at Enders Wildlife Management Area in Chase County and 350 hectares (863 acres) at Oglala NG in Sioux County (Fritz, NGPC, in litt. 2002). Thompson (USFS, in litt. 2002) provided a more recent estimate for Oglala NG of 516 hectares (1,275 acres) of occupied habitat. This estimate represents an increase of 47 percent from the previous estimate in 2001.

NEW MEXICO—Based upon evaluations of remote sensing data, about 24,000 hectares (60,000 acres) of black-tailed prairie dog occupied habitat existed Statewide in 2002 (Bell, New Mexico Department of Game and Fish (NMDGF), in litt 2002 and Thompson, NMDGF, in litt. 2003). Ground-truthing of this estimate is currently under way (Johnson *et al.* 2003). The Service estimate (based upon a sum of site-specific estimates) in the 12-month finding was 16,000 hectares (39,000 acres) of occupied habitat. The 1961 BSFW estimate was about 7,000 hectares (17,000 acres).

There are no extant complexes greater than 400 hectares (1,000 acres) in New Mexico. The black-tailed prairie dog appears to be largely absent from western portions of its historic range in New Mexico. Nevertheless, more than 75 percent of the counties within the historic range of the species contain prairie dogs (Luce, Prairie Dog Conservation Team Interstate Coordinator, in litt. 2002c).

For specific sites, the U.S. Army provided an estimate of 130 hectares (330 acres) of black-tailed prairie dog occupied habitat at a Fort Bliss facility in New Mexico (Hoefert, U.S. Army, in litt. 2002). This estimate is the same as that reported in 2001.

NORTH DAKOTA—Based upon aerial surveys and ground-truthing, a minimum of 8,000 hectares (20,000 acres) of black-tailed prairie dog occupied habitat existed Statewide (including on Tribal lands) in 2003 (McKenna, NDGFD, in litt. 2003). The

Service estimate (based upon Sidle, USFS, pers. comm. 1999) in the 12-month finding was 10,000 hectares (25,000 acres) of occupied habitat. The 1961 BSFW estimate was about 8,000 hectares (20,000 acres).

North Dakota has the smallest recent State-occupied habitat estimate with about 8,000 hectares (20,000 acres) in 540 active colonies (Knowles 2003). Knowles (2003) describes two complexes or metapopulations—one being connected to metapopulations in South Dakota, and the other quite disjunct from other populations. According to Luce (Prairie Dog Conservation Team Interstate Coordinator, in litt. 2003), there are no extant complexes greater than 2,000 hectares (5,000 acres) in North Dakota. One complex is greater than 400 hectares (1,000 acres), but less than 10 percent of the total occupied acreage in North Dakota occurs in complexes greater than 400 hectares (1,000 acres). Black-tailed prairie dog populations appear to be widely distributed in North Dakota with 81 percent of the counties within the historic range of the species containing prairie dogs (Knowles 2003).

For specific sites, 117 hectares (290 acres) of black-tailed prairie dog occupied habitat were estimated at Fort Berthold Reservation, following mapping in 2003 (Vosburgh, Intertribal Consortium, in litt. 2003). There was an estimated 821 hectares (2,026 acres) of occupied habitat on the Little Missouri NG (Luce, Prairie Dog Conservation Team Interstate Coordinator, in litt. 2003).

OKLAHOMA—Based upon aerial surveys, the Oklahoma Department of Wildlife Conservation (ODWC) estimated 26,000 hectares (64,000 acres) of black-tailed prairie dog occupied habitat Statewide in 2003 (Hoagland, ODWC, pers. comm. 2003). Approximately 50 percent of the area has been ground-truthed to date, with 15,700 hectares (38,700 acres) verified as active (Duffy, ODWC, in litt. 2003). The Service estimate (based upon Lomolino and Smith 2001) in the 12-month finding was 3,600 hectares (9,000 acres) of occupied habitat. The 1961 BSFW estimate was about 6,000 hectares (15,000 acres).

There do not appear to be any complexes greater than 400 hectares (1,000 acres) in Oklahoma. The black-tailed prairie dog appears to be largely absent from eastern portions of its historic range in Oklahoma. Nevertheless, more than 75 percent of the counties within the historic range of the species contain prairie dogs (Luce, Prairie Dog Conservation Team Interstate Coordinator, in litt. 2002c).

For specific sites, 5,477 hectares (13,523 acres) of black-tailed prairie dog occupied habitat were estimated to exist in Cimarron County (Luce, Prairie Dog Conservation Team Interstate Coordinator, in litt. 2002b).

SOUTH DAKOTA—In 2003, a partial estimate was provided for South Dakota of more than 81,000 hectares (200,000 acres) of black-tailed prairie dog occupied habitat, including Tribal lands (Cooper and Gabriel, South Dakota Department of Game, Fish, and Parks (SDDGFP) and South Dakota Department of Agriculture, in litt. 2004). Subsequently, a draft management plan was released that estimated, based on aerial surveys, 165,000 hectares (407,000 acres) of black-tailed prairie dog occupied habitat Statewide (South Dakota Department of Agriculture and SDDGFP 2004). This included an estimated 87,000 hectares (215,000 acres) of occupied habitat on Tribal lands and 78,000 hectares (192,000 acres) on non-Tribal lands. The Service estimate (based upon Sidle, USFS, pers. comm. 1999) provided in the 2000 12-month finding was 60,000 hectares (147,000 acres) of occupied habitat. The 1961 BSFW estimate was about 13,000 hectares (33,000 acres).

There are four extant complexes greater than 2,000 hectares (5,000 acres). More than 10 percent of the total acreage in South Dakota occurs in complexes greater than 400 hectares (1,000 acres). The black-tailed prairie dog appears to be widely distributed in South Dakota with at least 91 percent of the counties within the historic range of the species containing prairie dogs (South Dakota Department of Agriculture and SDDGFP 2004).

For specific sites, 1,900 hectares (4,800 acres) of black-tailed prairie dog occupied habitat were mapped at Badlands National Park in 2002 (Albertson, National Park Service (NPS), in litt. 2002) and 2,300 hectares (5,600 acres) in 2003 (Albertson, NPS, in litt. 2003). This represents a 17 percent increase from 2002 to 2003. Turner Endangered Species personnel estimated 584 hectares (1,443 acres) of occupied habitat at Bad River Ranch in 2003 (Bly Honness, Turner Endangered Species Fund, in litt. 2003), an 11 percent increase from 2002. Morgenstern (Ellsworth Air Force Base, in litt. 2003) reported 38 hectares (95 acres) of occupied habitat on Ellsworth Air Force Base and 320 hectares (800 acres) on the Badlands Bomb Range in 2003. The Lower Brule Sioux Tribe estimated 1,190 hectares (2,940 acres) of occupied habitat in 2003 (Lewis, Lower Brule Sioux Tribe, in litt. 2003). Newspaper interviews of Tribal representatives reported approximately 40,500 hectares (100,000 acres) of occupied habitat at Pine Ridge/Oglala Sioux Reservation and 20,250 hectares (50,000 acres) of occupied habitat at Rosebud Sioux Reservation in 2003 (Miller 2004). The South Dakota Black-Tailed Prairie Dog Management Plan estimates approximately 36,000 hectares (89,000 acres) of occupied habitat at Pine Ridge/Oglala Sioux Reservation and approximately 16,000 hectares (39,000 acres) of occupied habitat at Rosebud Sioux Reservation in 2004 (South Dakota Department of Agriculture and SDDGFP 2004). Thompson (USFS, in litt. 2002) estimated 7,327 hectares (18,105 acres) of occupied habitat at Buffalo Gap NG, 260 hectares (642 acres) at Fort Pierre NG, and 723 hectares (1,787 acres) at Grand River NG in 2002.

TEXAS—The Texas Parks and Wildlife Department (TPWD) provided a preliminary Statewide estimate in 2002 of 96,000 hectares (236,000 acres) of black-tailed prairie dog occupied habitat based upon 1996–97 digital ortho-photo quadrangle interpretation (Young, TPWD, in litt. 2002). The TPWD proposed to review 2003 satellite imagery for select counties to determine any changes in occupied habitat from 1996–97 to 2003. Ground-truthing has been completed for 70 out of 78 counties for a current minimum of 72,000 hectares (178,000 acres) of occupied habitat (Holdstock, TPWD, in litt. 2003). The Service estimate (modified from Cheatheam 1977) in the 2000 12-month finding was 29,000 hectares (71,000 acres) of occupied habitat. The 1961 BSFW estimate was about 11,000 hectares (26,000 acres).

There are no extant complexes greater than 400 hectares (1,000 acres) in Texas. The black-tailed prairie dog appears to be distributed throughout most of its historic range in Texas. More than 75 percent of the counties within the historic range of the species contain prairie dogs (Luce, Prairie Dog Conservation Team Interstate Coordinator, in litt. 2002c).

For specific sites, about 284 hectares (700 acres) of occupied habitat were estimated at the City of Lubbock Land Application Site (Fuquay 2004). County estimates are under development by the TPWD.

WYOMING—Luce (Prairie Dog Conservation Team Interstate Coordinator, in litt. 2003) estimated 51,000 hectares (125,000 acres) of black-tailed prairie dog occupied habitat Statewide in 2003. This estimate is equal to the Service estimate (based upon a projected decline from Wyoming Game and Fish Department's (WGFD)

1987 estimate) in the 12-month finding. The 1961 BSFW estimate was about 20,000 hectares (49,000 acres). The WGFD is currently mapping towns from 2001 color infrared aerial photos and field checking a significant portion of the towns mapped (Rothwell, WGFD, in litt. 2003).

There is one extant complex greater than 2,000 hectares (5,000 acres) in Wyoming. We are unaware of any additional complexes greater than 400 hectares (1,000 acres). It appears that less than 10 percent of the total occupied acreage in Wyoming occurs in complexes greater than 400 hectares (1,000 acres). The black-tailed prairie dog appears to be widely distributed throughout most of its historic range in Wyoming. More than 75 percent of the counties within the historic range of the species contain prairie dogs (Luce, Prairie Dog Conservation Team Interstate Coordinator, in litt. 2002c).

Plague has resulted in notable declines in the State's largest identified complex at Thunder Basin NG. Thunder Basin NG was estimated to contain about 3,600 hectares (9,000 acres) of occupied habitat in 2003 following a plague epizootic (Byer, USFS, pers. comm. 2003). Approximately 7,300 hectares (18,000 acres) of occupied habitat existed in 2000 prior to plague (Thompson, USFS, in litt. 2002). Another way to evaluate the impacts of plague at this site is to examine the number of colonies impacted. In 2002, the WGFD reported that only 11 percent of the colonies surveyed at Thunder Basin NG were still active (Wichers, WGFD, in litt. 2002).

For other specific sites, the U.S. Army provided an estimate of 280 hectares (700 acres) of black-tailed prairie dog occupied habitat at the Sheridan Training Area in 2002 (Hoefert, U.S. Army, in litt. 2002). This was the same as the estimate provided in 2001. Cheatham (NPS, in litt. 2003) reported 16 hectares (40 acres) of occupied habitat at Devils Tower National Monument in 2003.

CANADA—No new estimates of black-tailed prairie dog occupied habitat have been provided since 2001. The most recent estimate is 1,049 hectares (2,589 acres) of occupied habitat (Fargey, Grasslands National Park, in litt. 2001). This estimate is similar to the Service estimate in the 12-month finding of 800 hectares (2,000 acres) of occupied habitat, all at Grasslands National Park in Saskatchewan. In general, population estimates of the black-tailed prairie dog in Canada appear to be stable, but small.

MEXICO—No new estimates of black-tailed prairie dog occupied habitat have been provided since 2001. The most recent estimate is more than 20,000 hectares (49,000 acres) of occupied habitat, almost all of it at one site near Janos, Chihuahua (List in litt. 2001). The Service estimate in the 12-month finding was 36,000 hectares (90,000 acres) of occupied habitat. List (in litt. 2001) also noted that 1,170 hectares (2,889 acres) of occupied habitat had been lost (50 percent of that due to conversion of rangeland to cropland), but that the large difference from earlier estimates for the site was due to earlier mapping errors and did not represent an actual loss of occupied habitat. In general, population estimates of the black-tailed prairie dog in Mexico appear to be stable in recent decades. The species appears to be absent from much of its historic range in Mexico.

State agencies now estimate approximately 745,400 hectares (1,842,000 acres) of occupied habitat across the United States as opposed to an estimate of 364,000 acres in 1961. As noted above, evaluation of prairie dog population status is based on amount of occupied habitat, not numbers of individual animals. However, many people are interested in the estimated numbers of prairie dogs. Estimates of black-tailed prairie dog density typically range from between 2 to 18 animals per acre, with an average of 10 per acre. Applying these density estimates to the acreage figures generates an estimated population of black-tailed prairie dogs ranging between 3,684,000 and 33,156,000, with the average density figure yielding an estimated population of 18,420,000 black-tailed prairie dogs in the United States. This estimate of the abundance of the black-tailed prairie dog has implications for our analysis of the threats faced by the black-tailed prairie dog described below.

Discussion of Listing Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to black-tailed prairie dog are evaluated below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In the 2000 12-month finding, we concluded that effects due to the present or threatened destruction, modification, or curtailment of habitat or range were a moderate, imminent threat. No changes regarding the magnitude or immediacy of threat from this factor were made in our assessment of the species and resubmitted petition finding in 2001 (66 FR 54808, October 30, 2001). Our 2002 assessment and resubmitted petition finding (67 FR 40657, June 13, 2002) addressed habitat threats individually. We concluded that the present or threatened destruction of habitat from agricultural conversion and other factors was no longer a threat. We concluded that the present or threatened modification of habitat due to the presence of plague was a moderate, imminent threat. We concluded that the present curtailment of habitat due to chemical control was no longer a threat and the threatened curtailment of habitat was a low magnitude, non-imminent threat.

Historically as many as 40 million hectares (100 million acres) of occupied black-tailed prairie dog colonies occurred across a landscape of approximately 162 million hectares (400 million acres) of potential habitat (Black-footed Ferret Recovery Foundation, in litt. 1999a; Fagerstone and Ramey 1996; Knowles 1998; Seton 1953). At present, there are an estimated 745,400 hectares (1,842,000 acres) of occupied habitat in the United States. Habitat destruction resulted from cropland development, urbanization, changes in vegetative communities, burrow deterioration, and fragmentation. The most substantial cause of habitat destruction that we are able to quantify is cropland development. Conversion of the native prairie to cropland has largely progressed across the species' range from east to west, with the more intensive agricultural use in the eastern portion of the species' range. Black-tailed prairie dog use of potential habitat is somewhat, but not completely, limited by this conversion. Approximately 37 percent of the suitable habitat within its range has been converted to cropland uses (Black-footed Ferret Recovery Foundation, in litt. 1999b). However, the 12-month finding noted that the current threat of habitat loss through cropland conversion is much less than in the early days of agricultural development in the Great Plains and that a considerable amount of potential unoccupied habitat remains.

The Natural Resources Conservation Service quantified land cover/land use changes from 1982 to 1997 (U.S. Department of Agriculture 2000). The 11 States within the historic range of the black-tailed prairie dog experienced a 10 percent loss of cropland and a 2 percent loss of rangeland during this

time period. However, when the amount of current occupied habitat is contrasted with the amount of remaining rangeland (potential habitat), estimated in the hundreds of millions of acres, it is evident that sufficient potential habitat still occurs in each of the 11 States within the historic range of the species to accommodate large expansions of black-tailed prairie dog populations (U.S. Department of Agriculture 2000). This conclusion is supported by Sidle *et al.* (2001), who noted that, although substantial areas of grassland have been converted to cropland in the northern Great Plains, vast areas of suitable habitat for colonization and expansion of black-tailed prairie dogs remain.

Rosmarino (Forest Guardians *et al.*, in litt. 2003a and 2003b) expressed concern regarding the substantial loss of habitat due to urbanization along the Colorado Front Range. We acknowledge that urbanization is an ongoing factor in habitat loss along the Front Range. In the 12-month finding, we noted that urbanization represents a locally substantial loss of occupied habitat, but in a range-wide context it is not significant. We continue to believe that, given population estimates in Colorado and elsewhere, urbanization cannot be considered a threat at present or in the foreseeable future, either in Colorado or rangewide.

Gilpin (University of California, in litt. 2001) considered habitat fragmentation, which decreases colony and metapopulation size, a serious threat that could impact future viability of the black-tailed prairie dog. However, Luce (Prairie Dog Conservation Team Interstate Coordinator, in litt. 2002c) suggested that fragmentation of habitat and scattered distribution may have isolated black-tailed prairie dog populations and prevented plague from impacting them. He noted that it is important to recognize the presence and value of "small, remnant populations." This issue is more thoroughly discussed under Factor C.

We continue to conclude that present or threatened habitat destruction is not a threat to the species, although considerable effects due to this factor have occurred in the past. Additionally, we now conclude that present or threatened habitat modification as it relates to plague is not a significant threat to the species given the analysis that follows under Factor C. Threatened habitat curtailment as it relates to chemical control is not a significant threat to the species given the analysis that follows under Factor E.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the 2000 12-month finding, we concluded that effects due to scientific or educational purposes and commercial use of the species via the pet trade were not threats to the species. These conclusions were reaffirmed in our assessments of the species in 2001 and 2002. We continue to believe these factors are not threats pursuant to the definitions of the Act.

The 2000 12-month finding also concluded that recreational shooting could be a low, imminent threat in some circumstances. No changes regarding the magnitude or immediacy of threat from this factor were made in our 2001 Candidate Assessment. In the 2002 Candidate Assessment we determined that recreational shooting did not rise to the level of a threat to the species.

Knowles (2003) noted extensive recreational shooting in North Dakota, but found no clear evidence that shooting controlled prairie dog populations. Rosmarino (Forest Guardians *et al.*, in litt. 2003a and 2003b) suggested that density is reduced, that small colonies have been extirpated by shooting, and that larger colonies could be reduced. Reeve and Vosburgh (in draft) concluded that interest in and intensity of recreational shooting has increased dramatically over the past decade and that shooting can cause changes in prairie dog behavior and reproductive success. However, they also noted that prairie dog populations are capable of recovering from shooting.

Some of the States with substantial amounts of public lands are experiencing greater shooting pressure on prairie dogs in some areas than previously estimated, and are implementing regulations to better monitor and control this activity. These regulations are described under Factor D.

We are aware that recreational shooting can reduce black-tailed prairie dog population densities at specific sites, and acknowledge the possibility that extirpation may have occurred in isolated circumstances (Knowles 1988), but we believe black-tailed prairie dog populations can recover from very low numbers following intensive recreational shooting (Knowles 1988, Reeve and Vosburgh in draft). Therefore, we continue to conclude that effects due to recreational shooting do not rise to the level of a threat pursuant to the definitions of the Act. Recent Statewide and range-wide estimates of occupied habitat further reinforce this conclusion.

C. Disease or Predation

In the 2000 12-month finding, we concluded that predation was not a threat. This conclusion was reaffirmed in our 2001 and 2002 Candidate Assessments. We continue to believe this factor is not a threat pursuant to the definitions of the Act.

The 2000 12-month finding concluded that disease was a moderate, imminent threat. No changes regarding the magnitude or immediacy of threat from disease were made in our 2001 or 2002 assessments.

Although plague is likely the most important factor adversely influencing black-tailed prairie dogs, recent information indicates the populations are not as vulnerable to the disease as previously thought. Plague is an exotic disease foreign to the evolutionary history of North American species. It is caused by the bacterium *Yersinia pestis*, which fleas acquire from biting infected animals and can then transmit via a bite to other animals. The disease also can be transmitted pneumonically directly among infected animals. Some rodent species may act as carriers of the disease or infected fleas with little or no symptoms. Black-tailed prairie dogs cannot be considered carriers because of their high mortality rate (Barnes 1993, Cully and Williams 2001).

Plague was first observed in wild rodents in North America near San Francisco, California, in 1908 (Eskey and Haas 1940). The first reported incidences of plague in black-tailed prairie dogs occurred in the 1940s (Gage, Center for Disease Control, pers. comm. 1999, Miles *et al.* 1952). Evidently, plague spread from the west coast to its present easterly limit in about 50 years. Plague is currently limited to the western two-thirds of the black-tailed prairie dog range (perhaps due to some unknown ecological limitations) (Barnes 1993). Black-tailed prairie dog habitat in all of Montana, Wyoming, Colorado, New Mexico, and Arizona is impacted by plague. Portions of western North Dakota, Nebraska, Kansas, Oklahoma, and Texas have records of plague in black-tailed prairie dogs. Black-tailed prairie dog habitat in the eastern portions of these same States and all of South Dakota are free of plague.

The major effects of plague on black-tailed prairie dogs are to reduce colony size, increase variance in colony populations, and increase inter-colony distances within complexes (Brand 2002). Recently documented plague outbreaks include Bent County, Fort Carson, Pinon Canyon, and Rocky Mountain Arsenal in Colorado; Crow

and Fort Belknap Reservations in Montana; Kiowa NG and Rita Blanca NG in Texas and Oklahoma; and Thunder Basin NG in Wyoming. The plague epizootic at Thunder Basin was particularly notable because the location was one of the few remaining complexes greater than 4,000 hectares (10,000 acres), and the epizootic brought plague close to some of the last remaining large plague-free complexes found in South Dakota.

In our 2000 12-month finding, we focused attention on a few large black-tailed prairie dog populations impacted by plague and extrapolated population losses at these sites across the species' entire range. Based on generally accepted conservation biology principles (Gilpin and Soule 1986; Hanski and Gilpin 1997; MacArthur and Wilson 1967; Miller *et al.* 1996; Shaffer 1981; Wilcove *et al.* 1986; and Wilcox and Murphy 1985), we presumed that smaller black-tailed prairie dog populations had been and would be similarly or more adversely impacted. An approximate 50 percent decline per decade was predicted for the foreseeable future. Much better information is now available. Given recent population estimates across a majority of the species' range, it appears the previously hypothesized projections were invalid. While occupied habitat at specific large complexes may experience dramatic fluctuations due to plague epizootics, they do not appear to be influencing the species' range-wide persistence.

Recent data indicate that, in some portions of the species' range, some colonies recover and may approach pre-plague population levels following plague epizootics. At Comanche NG in Colorado, approximately 1,820 hectares (4,500 acres) of black-tailed prairie dog occupied habitat were estimated to exist on the Carrizo Unit of Comanche NG in 1995. In 1996, all of the towns inspected had experienced total or near total extirpation. No fleas were collected to facilitate plague surveillance, but the pattern of widespread elimination of prairie dog colonies was the pattern expected from sylvatic plague. Plague was documented the following year in a nearby colony. In 1998, approximately 200 hectares (500 acres) of occupied habitat were found on the grassland's Carrizo Unit (Cully 1998). Data are not available from the Carrizo Unit for subsequent years, but throughout the entire Comanche NG, 560 hectares (1,374 acres) of occupied habitat were present in 1998 (Sidle, USFS, in litt. 1999). Occupied habitat at Comanche NG increased to 800 hectares (1,974 acres) in 1999 (Thompson, USFS, in litt. 2002), 1,760 hectares (4,342 acres) in 2001 (Cully and Johnson 2002), and 2,380 hectares (5,886 acres) in 2002 (Cully and Johnson 2002). Cully and Johnson (2002) noted that "colony area on the Comanche NG is similar to what was present before the die-off there in 1994–95."

At Cimarron NG in Kansas, plague was documented in 1949, 1997, and 1999 (Cully and Williams 2001). Nevertheless, populations appear to be increasing in recent years, with occupied habitat estimates of 520 hectares (1,287 acres) in 1998 (Sidle, USFS, in litt. 1999), 680 hectares (1,688 acres) in 1999 (Thompson, USFS, in litt. 2002), 1,070 hectares (2,639 acres) in 2001 (Thompson, USFS, in litt. 2002) and 1,345 hectares (3,321 acres) in 2002 (Cully and Johnson 2002). Cully and Johnson (2002) noted that "colony area on the Cimarron NG is the highest ever recorded." Other examples of population recovery are discussed in the Distribution, Abundance, and Trends section of this document. The severity of plague outbreaks may vary, with severe outbreaks and limited recovery occurring at some complexes (Rocky Mountain Arsenal, Colorado, and Ft. Belknap and Northern Cheyenne Reservations in Montana) and less severe outbreaks with apparently complete or near complete recovery at other sites (Cimarron NG and Comanche NG).

Recent laboratory research indicates that at low levels of exposure a small percentage of black-tailed prairie dogs show some immune response and consequently some resistance to plague (Rocke, U.S. Geological Survey (USGS), pers. comm. 2002), similar to what has been reported in Gunnison's (Cully *et al.* 1997) and white-tailed prairie dogs (Biggins, USGS, pers. comm. 2002). The Center for Disease Control recently reported that seroconversion (evidence of some immune response) occurred in 2 out of 65 black-tailed prairie dogs collected following a plague event at Pawnee NG in Colorado (Antolin, Colorado State University, pers. comm. 2002). Nevertheless, an individual black-tailed prairie dog exposed to plague is at high risk due to a combination of low resistance and high sociality (Biggins and Kosoy 2001).

It has been suggested that the responses of black-tailed prairie dog populations to plague may vary based on their population density (Cully, USGS, pers. comm. 2002). The likelihood of plague transmission in prairie dogs from flea bites versus pneumonically from other prairie dogs already infected is unknown, but is being investigated. It may be that survival of some individuals in low-density or isolated populations is facilitated by the necessity of high exposure rates for individuals to contract the disease. Single or even multiple flea bites do not always have a high enough dose for infection to occur (Rocke, USGS, pers. comm. 2002). In contrast, if plague is spread pneumonically from animal to animal, a much larger dose is transferred than from a flea bite. In such situations, the impact on a large, densely populated complex could be substantial. A population dynamic may have developed that somewhat protects low density, isolated black-tailed prairie dog populations from extirpation, even with infected fleas resident in the habitat of surviving prairie dogs.

Lomolino *et al.* (2003) postulated that habitat fragmentation may benefit some prairie dog populations by protecting them from plague through isolation. Historically, black-tailed prairie dogs were typically found in large complexes that consisted of many colonies that were close enough to each other to allow frequent dispersal between colonies. Currently, due to a combination of factors including habitat fragmentation, plague, and poisoning, many prairie dogs exist in much smaller complexes or in isolated colonies where the possibility for interchange is reduced. Smaller populations also may be protected by limiting exposure via direct animal-to-animal contact (Cully and Williams 2001, Roach *et al.* 2001). Influences other than plague likely will still adversely affect small black-tailed prairie dog populations, but they have not been demonstrated to be as serious as plague.

Trudeau (2002) noted that "sylvatic plague epizootics have the potential to cause severe population bottlenecks in black-tailed prairie dog colonies contributing to losses of alleles and decreases in heterozygosity. Plague could potentially devastate genetic variability in affected prairie dog colonies, causing inbreeding depression in the short-term and inability to adapt to environmental change in the long-term." However, the author also noted that "even though a significant reduction in heterozygosity was observed in plagued colonies, gene flow may balance the effects of the sylvatic plague by reintroducing levels of variation in genetically depauperate post-plague colonies. * * * Given time, gene flow should erase the effects of plague on genetic variability assuming that colonies receive an adequate number of migrants to reintroduce genetic variability and population size is stable following recovery." Roach *et al.* (2001) noted that extinction and

recolonization by black-tailed prairie dogs in the presence of plague has not increased genetic differentiation among prairie dog colonies in north-central Colorado. Dispersal has been adequate to prevent genetic isolation.

In 2003, monkeypox was detected in pet prairie dogs in Wisconsin, Illinois, and Indiana. The source of the infection was a shipment of rodents from Africa. The disease was never found in any wild prairie dogs or other wild rodents (Center for Disease Control 2003). Consequently, we do not consider this disease to be a threat to black-tailed prairie dogs.

We continue to conclude that effects on black-tailed prairie dog populations due to predation are not a threat to the persistence of the species. Our previous conclusions regarding the perceived effects of plague on the persistence of the species have been altered by information indicating that—(1) High exposure doses of plague bacilli may be necessary for disease contraction in some individuals; (2) limited immune response has been observed in some individuals; (3) a population dynamic may have developed in low-density, isolated populations that contributes to the persistence of these populations; (4) the apparent ability of some sites to recover to pre-plague levels after a plague epizootic; and (5) approximately one-third of the species' historic range has not been affected by plague. Based on both the new information above and recent State-by-State range-wide estimates of occupied habitat that indicate species abundance, plague no longer appears to be as significant a threat as previously thought. We predict that plague will continue to influence black-tailed prairie dog population dynamics to a degree. However, we now conclude that plague in combination with other factors is not likely to cause the black-tailed prairie dog to become an endangered species within the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

In the 2000 12-month finding, we concluded that the inadequacy of existing regulatory mechanisms was a moderate, imminent threat. No changes regarding the magnitude or immediacy of threat from this factor were made in our 2001 Candidate Assessment. In our 2002 Candidate Assessment, the threats due to inadequate regulatory mechanisms were addressed separately as they related to habitat curtailment, recreational shooting, disease, and chemical control. The regulatory concerns as they pertained to recreational shooting were not considered a threat (since regulatory shooting was not considered a threat). The regulatory concerns as they pertained to chemical control were considered low, non-imminent threats. The regulatory concerns as they pertained to disease were considered a moderate, non-imminent threat.

In this finding we have addressed the regulatory concerns as they relate to disease in factor C. We have discussed chemical control under factor E, and we have dealt with recreational shooting under factor B. We have found disease to be a low-level, non-imminent threat, chemical control not to be a threat, and recreational shooting not to be a significant threat. Given that these issues have not been identified as significant threats, there is no immediate need to consider whether efforts to regulate them are adequate.

We have considered the current status of State, Tribal, and Federal regulatory mechanisms, as well as any proposed changes. A description of these regulatory measures with a specific focus on recreational shooting, chemical control, and management goals designed to ameliorate the influences of plague and other lesser impacts is included in the revised candidate assessment.

During the past few years some States and Tribes have made substantial progress in initiating management efforts for the black-tailed prairie dog, including completing surveys to provide more accurate estimates of occupied habitat, drafting management plans, enacting laws that change the status of the species from pest to a designation that recognizes the need for management, establishing regulations that allow for better management of recreational shooting, and setting future goals for occupied habitat that will address population management needs for disease and other threats. While these efforts are important to black-tailed prairie dog management, the distribution, abundance, and trends data indicate that inadequate regulatory mechanisms are not limiting black-tailed prairie dog populations at present, nor are they likely to within the foreseeable future. Therefore, we now conclude that these concerns do not rise to the level of a threat.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

We consider chemical control of black-tailed prairie dogs and synergistic effects from all threats under this factor. Chemical control also is influenced by adequacy of regulatory mechanisms.

In the 2000 12-month finding we concluded that both chemical control and synergistic effects were moderate, imminent threats. No changes regarding the magnitude or immediacy of threat from this factor were made in the 2001 Candidate Assessment. In the 2002 Candidate Assessment we concluded that chemical control was a moderate, non-imminent threat. We concluded that synergistic effects likely impact the species; however, we were unable to quantify those effects and consequently described the effects as not a threat due to a lack of information.

Organized prairie dog control from 1916 to 1920 included the poisoning of tens of millions of acres of western rangeland (Bell 1921). From 1937 to 1968, 12,331,178 hectares (30,447,355 acres) of prairie dog occupied habitat were controlled (Cain *et al.* 1972). Of the lands controlled from 1937 to 1968, 75 percent were treated by 1950, with an average of more than 650,000 hectares (1.6 million acres) treated annually. From 1951 to 1968, the average amount of prairie dog occupied habitat controlled annually decreased to approximately 174,000 hectares (430,000 acres) per year. In the 1960s, several States reached their lowest estimates of black-tailed prairie dog occupied habitat. According to Cain *et al.* (1972), in the late 1960s the public became interested in Federal animal control programs, including prairie dog control, and this interest resulted in increased attention to ecological considerations. Several toxicants previously used for pest or predator control were banned. In 1972, Compound 1080, which was used extensively in early prairie dog control efforts, was banned by Presidential Executive Order 11643 for use on Federal lands, in Federal programs, or on private lands (Barko 1997). Although prairie dog control continued via other toxicants (zinc phosphide), it was at a reduced rate and with less effective poisons that required pre-baiting.

The last large-scale chemical control effort for black-tailed prairie dogs occurred on the Pine Ridge/Oglala Sioux Reservation in South Dakota in the 1980s. This effort resulted in the eradication of most prairie dogs on approximately 185,740 hectares (458,618 acres) of occupied habitat from 1980 to 1984. From 1985 to 1986, 97,000 hectares (240,000 acres) were re-treated (Roemer and Forrest 1996). Estimates of occupied habitat have increased at Pine Ridge/Oglala Sioux Reservation from approximately 8,000 to 12,000 hectares (20,000 to 30,000 acres) in 1999 (Yellowhair, Pine Ridge Sioux Tribe, pers. comm. 1999) to approximately 36,000 to 40,000 hectares (89,000 to 100,000 acres) in 2003 (South Dakota

Department of Agriculture and SDDGFP 2004; Miller 2004). Following control efforts on Pine Ridge, three additional extensive control efforts targeted for the Cheyenne River Sioux and Rosebud Sioux Reservations in South Dakota and Fort Belknap Reservation in Montana were halted due to concerns regarding the lack of available black-footed ferret reintroduction sites.

The potential for future large-scale control efforts on Tribal lands may affect the black-tailed prairie dog in South Dakota. The BIA is currently considering some chemical control of rapidly expanding colonies on Tribal lands. Black-tailed prairie dog populations at several of these sites are the last remaining large complexes (greater than 4,000 hectares/10,000 acres) that have not experienced plague. The suggested intent of these proposed efforts would be to control some prairie dogs, particularly where they encroach on private lands, but allow core areas that are suitable for potential black-footed ferret reintroduction efforts to remain intact. This approach is more flexible and much less problematic than historic attempts to completely extirpate populations. As noted earlier, the most recent estimate of occupied habitat for South Dakota for 2003 was 165,000 hectares (407,000 acres) with approximately 87,000 hectares (215,000 acres) occurring on tribal lands.

Recent chemical control efforts have often been less successful than historic efforts for a variety of reasons. Early chemical control efforts were well-funded, federally-directed efforts that utilized efficient toxicants. Many current control efforts are small-scale, privately funded and privately directed efforts. The result is localized effects without significant impacts on population dynamics range wide. Available chemicals also are less effective than early toxicants that are now banned.

It is difficult to obtain accurate information regarding the use of toxicants to control black-tailed prairie dogs. The Environmental Protection Agency, the Federal agency responsible for establishing labeling requirements on all pesticides, has been unable to provide any information regarding distribution or use. They have noted that distribution and sale of a proprietary pesticide is considered confidential trade information and cannot be disclosed except in unusual circumstances. They also note that their offices do not have information on the amount of bait sold or the acreage controlled. Applicators are required to keep records for 3 years; however, they are not required to submit these records to a central location (Roybal, U.S. Environmental Protection Agency, in litt. 2002). We received limited information regarding sales of toxicants from APHIS and from some State agencies. This information is provided below.

APHIS provides technical assistance and conducts operational work in several States within the historic range of the black-tailed prairie dog. While APHIS is only one avenue available to landowners seeking chemical control and provides only a partial picture of control activities, some perspective regarding general trends can be gained from their records. For example, sales of zinc phosphide oats in Colorado, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, and Wyoming totaled 2,062 kilograms (4,545 pounds) in 1998, 3,445 kilograms (7,595 pounds) in 1999, 3,647 kilograms (8,040 pounds) in 2000, 3,223 kilograms (7,105 pounds) in 2001, and 5,933 kilograms (13,080 pounds) in 2002 (Green, APHIS, in litt. 2002). APHIS has no operational programs in Kansas or South Dakota.

Statewide estimates of toxicant sales are available for Nebraska, South Dakota, and Wyoming. The South Dakota Department of Agriculture sold approximately 12,247 kilograms (27,000 pounds) of zinc phosphide oat bait to South Dakota and Nebraska in 2000, 19,505 kilograms (43,000 pounds) in 2001, 44,452 kilograms (98,000 pounds) in 2002, and 61,235 kilograms (135,000 pounds) in 2003 (Fridley, South Dakota Department of Agriculture, in litt. 2004). At least 7,343 kilograms (16,189 pounds) of zinc phosphide bait was purchased from South Dakota and applied in Nebraska in 2002 (Hobbs, APHIS, pers. comm. 2003). In addition to legal control, numerous anecdotal reports have been received regarding illegal control activities; however, no data are available to evaluate the scope of these activities (Fritz, NGPC, in litt. 2002). In Wyoming, sales of toxicants were reported as "greatly increased between 2000 and 2001, especially in counties such as Campbell, Weston, and Niobrara." Statewide sales of zinc phosphide increased from 3,643 to 28,579 kilograms (8,031 to 63,007 pounds). Aluminum phosphide fumotoxin sales increased from 126 to 713 flasks over the same period. Sales trends for 2002 also appeared to be on the increase for most counties (Wichers, WGFD, in litt. 2002).

Little information regarding the extent of chemical control is available for other States. In Texas, it was reported that in 2002, 20,500 aluminum phosphide tablets and 295 kilograms (650 pounds) of zinc phosphide oat bait were used by APHIS to treat an estimated 1,000 hectares (2,463 acres) (Leland, APHIS, in litt. 2002). APHIS was not the only source of toxicants in Texas (Young, TPWD, in litt. 2002). Green (APHIS, in litt. 2002) reported that in 2002, APHIS sold 127 kilograms (280 pounds) of zinc phosphide in North Dakota, 331 kilograms (730 pounds) in New Mexico, and 590 kilograms (1,300 pounds) in Montana. APHIS was not the only source of zinc phosphide in these States. In Oklahoma, the ODWC has issued permits to control approximately 28 hectares (70 acres) (Duffy, ODWC, in litt. 2003). Rosmarino (Forest Guardians *et al.* in litt. 2003a) reported on numbers of prairie dogs poisoned in urban areas along the Front Range of Colorado in 2001 and 2002. If a density of 10 prairie dogs per acre is assumed for this report and a number of 500 individuals is assumed where a quantity of "hundreds" is given, approximately 570 hectares (1,400 acres) were poisoned in 2001 and 900 hectares (2,200 acres) in 2002. Both of these estimates equate to less than 0.5 percent of the Statewide population of the species in Colorado at that time.

When grain zinc phosphide bait is applied according to directions, it can result in an 80 to 90 percent reduction in prairie dog numbers. The recommended application rate is 0.15 kilogram/0.4 hectare (0.33 pound/1 acre) (Hygnstrom *et al.* 1994). When applied properly, aluminum phosphide can provide greater than 90 percent control. Thus, some of the above numbers may indicate the potential for significant impacts to the species. For example, if all of the product were applied within the year of purchase at the recommended application rate, approximately 164,000 hectares (405,000 acres) would have been treated in South Dakota and Nebraska in 2003. In Wyoming, approximately 76,486 hectares (189,000 acres) would have been treated in Wyoming in 2001 if all of the oat bait were applied within the year of purchase at the recommended application rate. It is unclear to what extent consumers are effectively applying the toxicant they have available.

Furthermore, site-specific and range-wide data indicate the species' resiliency to the impacts of chemical control. In the Pine Ridge/Oglala Sioux Reservation example discussed above, estimates occupied habitat increased from approximately 8,000 to 12,000 hectares (20,000 to 30,000 acres) in 1999 to approximately 36,000 to 40,000 hectares (89,000 to 100,000 acres) in 2003. Other site-specific examples of populations rebounding are discussed

in the distribution, abundance, and trends section of this document. Recent range-wide data also show little evidence of permanent impacts from chemical control. It is possible that population densities may have been reduced on some lands due to chemical control. Additionally, black-tailed prairie dogs may have been extirpated from some specific sites. Although we acknowledge extant and potentially significant local effects on some populations, based on the new information above and recent State-by-State range-wide estimates of occupied habitat, we now conclude that impacts on the black-tailed prairie dog due to chemical control are not a threat to the extent that the species could become endangered in the foreseeable future.

We believe that synergistic effects likely impact the black-tailed prairie dog; however, we are unable to adequately describe and quantify these effects. Additionally, we are unaware of data from similar species in similar ecological circumstances that would infer that similar influences would cause the status of the black-tailed prairie dog to meet the Act's definition of a threatened species.

Revised Petition Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, information available in our files, other published and unpublished information, and information submitted to us following our 90-day petition finding (64 FR 14425, March 25, 1999)), the original 12-month finding (65 FR 5476, February 4, 2000), and the 2001 and 2002 candidate assessments and resubmitted petition findings (66 FR 54808, October 30, 2001, and 67 FR 40657, June 13, 2002, respectively). On the basis of the best scientific and commercial information available, we find that the petitioned action to list the black-tailed prairie dog under the provisions of the Endangered Species Act is not warranted.

State agencies now estimate approximately 745,400 hectares (1,842,000 acres) of occupied habitat across 10 western States. This estimate of the occupied habitat of black-tailed prairie dog has played a substantial role in this decision. Previously, we focused attention on a few large black-tailed prairie dog populations impacted by plague and extrapolated population losses at these sites across the species' entire range. Based on the updated distribution, abundance, and trends data, it appears that these extrapolations were not correct. Dramatic fluctuations in the amount of black-tailed prairie dog occupied habitat at specific large complexes may occur due to plague epizootics or chemical control, but they do not appear to influence range-wide species persistence.

The magnitude and immediacy of the threat should be viewed pursuant to the definitions of the Act. To be considered a threat, a factor should be shown to play a significant role in the population dynamics of the species such that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of the range. None of the five listing factors as described in section 4(a) of the Act and further described at 50 CFR 424.11 rise to this level of threat. Thus, the species does not meet the Act's definition of a threatened species. As a result we find that the species is not in danger of extinction in the foreseeable future and, therefore, the petitioned action is not warranted. Thus we also no longer consider the species to be a candidate for listing.

We will continue to monitor the status of the species, and to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. We will reconsider this determination in the event that new information indicates that the threats to the species are of a considerably greater magnitude or imminence than identified here.

References

A complete list of all references cited herein is available upon request from the South Dakota Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES**).

Author

The primary author of this finding is the South Dakota Fish and Wildlife Office, U.S. Fish and Wildlife Service staff (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 12, 2004.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 04–18872 Filed 8–17–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 159
Wednesday, August 18, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 12, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@ OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Qualification Requirement.

OMB Control Number: 0560–NEW.

Summary of Collection: The Agricultural Trade Development and Assistance Act of 1954, as amended, (for Title II, Pub. L. 480), Section 416(b) of the Agricultural Act of 1949, as amended (for Section 416(b)), and Food for Progress Act of 1985, as amended authorizes the Department of Agriculture, Farm Service Agency, Kansas City Commodity Office (KCCO) Export Operations Division to procure, sell, and transport agricultural commodities. Commodities are delivered to foreign countries under the different food programs. In order for KCCO to carry out its procurement mission, all prospective bidders that want to bid on contracts procured under USDA or CCC authorities must be qualified prior to submitting offers for Invitations for Bid. The qualification requirement is a reexamination and revalidation of established qualifications as required by the Federal Acquisition Regulation, and is necessary for KCCO to carry out its procurement mission.

Need and Use of the Information: The collection of information will allow KCCO to evaluate offers impartially, purchase or sell commodities, and obtain services to meet domestic and export program needs. Also, the collected information will allow KCCO to determine if a vendor has adequate financial resources to perform the contract or the ability to obtain them. Without the information, KCCO could not meet domestic and export program requirements of procuring, selling, and transporting agricultural commodities in a timely manner.

Description of Respondents: Business or other-for-profit; not-for-profit institutions.

Number of Respondents: 45.

Frequency of Responses: Reporting: Annually; Other (one time).

Total Burden Hours: 145.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–18890 Filed 8–17–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 12, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@ OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Cooperative State Research, Education, and Extension Service

Title: Grant Application Forms for the Small Business Innovation Research Grants Program.

OMB Control Number: 0524–0025.

Summary of Collection: In 1982, the Small Business Innovation Research (SBIR) Grants Program was authorized by Public Law 97–219, and in 2000, reauthorized through September 30, 2008, by Public Law 106–564. This legislation requires each Federal agency with a research or research and development budget in excess of $100 million to establish an SBIR program. Some of the objectives of the SBIR Program are to stimulate technological innovation in the private sector, strengthen the role of small businesses in meeting Federal research and development needs, increase private sector commercialization of innovations derived for USDA-supported research and developments efforts, and foster and encourage participation by women-owned and socially and economically disadvantaged small business firm in technological innovation. USDA conducts its SBIR Program through the use of grants and these grants are administered by CSREES.

Need and Use of the Information: CSREES uses forms CSREES–667, "Proposal Cover Sheet" and CSREES–668, "Project Summary," to collect recordkeeping data, required certification, and information used to respond to inquiries from Congress, other Government agencies, and the grantee community concerning grant projects supported by the USDA SBIR Program.

Description of Respondents: Business or other for-profit; individuals or households.

Number of Respondents: 650.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 1,424.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–18891 Filed 8–17–04; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 12, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_ OIRA_ Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Agricultural Marketing Service

Title: Generic fruit crops, Marketing Order Administration Branch.

OMB Control Number: 0581–0189.

Summary of Collection: Industries enter into marketing order program under the Agricultural Marketing Agreement Act (AMAA) of 1937, as amended by U.S.C. 601–674. The intent of the ACT is to provide the respondents the type of service they request, and to administer the marketing order programs. Marketing Order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the market orders, producers and handlers are nominated by their respective peers and serve as representatives on their respective committees/boards.

Need and Use of the Information: The information collected is used only by authorized committees employees and representatives of the USDA, that include AMS, Fruit and Vegetable Programs' regional and headquarters' staff.

Description of Respondents: Business or other for-profit; individuals or households; farms; Federal government; not for profit institutions.

Number of Respondents: 19,576.

Frequency of Responses: Recordkeeping; reporting; on occasion, quarterly; biennially; weekly; semi-annually; monthly; annually.

Total Burden Hours: 8,499.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–18893 Filed 8–17–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 12, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_ OIRA_Submission @OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: SRS Publications Evaluation Card.

OMB Control Number: 0596–0163.

Summary of Collection: Executive Order 12862 issued September 11, 1993, directed Federal agencies to change the way they do business, to reform their management practices, to provide service to the public that matches or exceeds the best service available in the private sector, and to establish and implement customer service standards to carry out principles of the National Performance Review. In response to this Executive Order, the Forest Service (FS) Southern Research Station developed a "Publication Comment" Card for inclusion when distributing scientific research publications. FS has come to realize that some changes in their publications may be necessary to achieve their goals and wishes to elicit voluntary feedback from their readers to help determine the changes to make. FS will collect information using the comment card.

Need and Use of the Information: FS will collect information, which will ask the respondents to rate the publication that they received or read. The information will be used to improve the readability and usefulness of FS articles, papers, and books. If the information is not collected, FS will forgo any opportunity to learn valuable information from readers that would help them improve their products to better meet their needs.

Description of Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,654,000.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 965.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–18894 Filed 8–17–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

[Docket Number TM–04–08]

Notice of Agricultural Management Assistance Organic Certification Cost-Share Program

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Notice.

SUMMARY: This Notice invites eligible States to submit a Standard Form 424, Application for Federal Assistance, and to enter into a Cooperative Agreement with the Agricultural Marketing Service (AMS) for the Allocation of Organic Certification Cost-Share Funds. The AMS has allocated $1.0 million for this organic certification cost-share program in Fiscal Year 2004. Funds will be available under this program to 15 designated States to assist organic crop and livestock producers certified by the Department of Agriculture (USDA) accredited certifying agents to the National Organic Program (NOP). Eligible States interested in obtaining cost-share funds for their organic producers will have to submit an Application for Federal Assistance, and will have to enter into a cooperative agreement with AMS for the allocation of such funds.

DATES: Completed applications for federal assistance along with signed cooperative agreements must be received by October 4, 2004 in order to participate in this program.

ADDRESSES: Applications for federal assistance and cooperative agreements shall be requested from and submitted to: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; e-mail: *bob.pooler@usda.gov.* Additional information may be found through the National Organic Program's homepage at *http://www.ams.usda.gov/nop.*

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; e-mail: *bob.pooler@usda.gov.*

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance Program authorized under the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1524). Under the applicable FCIA provisions, the Department is authorized to provide cost share assistance to producers in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. This organic certification cost-share program provides financial assistance to organic producers certified to the National Organic Program authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*)

To participate in the program, eligible States must complete a Standard Form 424, Application for Federal Assistance, and enter into a written cooperative agreement with AMS. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers receiving certification or update of certification by a USDA accredited certifying agent from October 1, 2004 through September 30, 2005. The Department has determined that payments will be limited to 75 percent of an individual producer's certification costs up to a maximum of $500.00.

Authority: 7 U.S.C. 1524.

Dated: August 12, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–18848 Filed 8–17–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kuiu Timber Sale Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber and to develop a road management plan for the Kuiu Timber Sale on north-central Kuiu Island, on the Petersburg Ranger District, Tongass National Forest. The proposed action provides for multiple timber sale opportunities and will result in the production of approximately 35 million board feet (mmbf) of timber from approximately 1,270 acres of forested land. Up to 15

miles of temporary road may be necessary for timber harvest; no new permanent roads would be constructed. A range of alternatives, responsive to significant issues, will be developed and will include a no action alternative. The Rowan Bay LTF will be used. This project is within the Kuiu biogeographic province. The Record of Decision will disclose whether and where the Forest Supervisor has decided to provide timber harvest units, roads and associated timber harvesting facilities.

DATES: An initial letter outlining the project timeline and public involvement opportunities was distributed during February 2004. A scoping letter will be mailed January of 2005. Individuals who want to receive this mailing should contact the Petersburg Ranger District at the following address. The Draft Environmental Impact Statement is projected to be filed with the Environmental Protection Agency (EPA) in the fall of 2004 and will begin a 45-day public comment period. The Final Environmental Impact Statement and Record of Decision are scheduled to be published in the spring of 2005.

ADDRESSES: Please send written comments to the Petersburg Ranger District, Tongass National Forest, Attn: Kuiu Timber Sale EIS, PO Box 1328, Petersburg, AK 99833. The Fax number is (907) 772–5995.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Patricia Grantham, District Ranger, Petersburg Ranger District, Tongass National Forest, PO Box 1328, Petersburg, AK 99833, telephone (907) 772–3871, or Kris Rutledge, Interdisciplinary Team Leader, Petersburg Ranger District, PO Box 1328, Petersburg, AK 99833, telephone (907) 772–3871.

SUPPLEMENTARY INFORMATION:

Background

The 46,100-acre Kuiu project area is located within Value Comparison Units 399, 400, 402, and 421 on Kuiu Island, Alaska, on the Petersburg Ranger District of the Tongass National Forest. A portion of one Inventoried Roadless Areas, North Kuiu #241, as identified by the Forest Plan and SEIS, is located within the project area. The project area includes one small old-growth habitat reserve as designated in the Forest Plan. There will be no proposed timber harvest in areas of Old-Growth Reserve management prescriptions. However, roads may be proposed through Old-Growth reserves to access suitable and available forestland outside the reserves. A Forest Plan amendment would be required if a decision is made to modify the old-growth habitat reserve boundary associated with this project.

The purpose and need for the proposed action responds to the goals and objectives identified by the Tongass Land Management Plan, as amended, and helps move the area toward the desired conditions as described in the forest plan. The Forest Supervisor is the Responsible Official for this action and will decide whether or not to harvest timber from the Kuiu Timber Sale area, and if so, how this timber will be harvested. The decision will be based on the information that is disclosed in the environmental impact statement.

The responsible official will consider comments, responses, the disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and will state that rationale in the Record of Decision.

The Forest Plan goals and objectives applicable to the Kuiu Project Area include:

- Provisions for a vigorous and healthy forest environment, including management of timber resource for production of sawtimber and other wood products from suitable lands made available for timber harvest on an even-flow, long-term sustained yield basis, and in an economically efficient manner.
- Provisions for current and future habitat needs of endemic wildlife species, maintenance and enhancement of current riparian conditions.
- Provisions for a diversity of opportunities for resource uses that contribute to the local and regional economies of Southeast Alaska to support a wide range of natural-resource employment opportunities within Southeast Alaska's communities.
- Ensures the Forest Service acts in a responsible manner by providing a timber supply sufficient to meet the annual market demand for the Tongass National Forest and the demand for the planning cycle while maintaining a Forest-wide system of old-growth forest habitat to sustain old-growth associated species and resources and ensures that the reserve system meets the minimum size, spacing, and composition criteria.

Public Participation

Public participation has been an integral component of the study process and will continue to be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Tribal Governments, Federal, State, and Local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. Written scoping comments have been solicited through an informal scoping package that was sent to the project mailing list and will be available at open houses in Petersburg, Alaska and Kake, Alaska. The scoping process includes: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of non-significant issues or those which have been covered by a previous environmental review. Tentative issues identified for analysis in the EIS include the potential effects of the project on, and the relationship of the project to, the old-growth habitat reserve system, roadless areas and timber sale economics.

Based on results of scoping and the resource capabilities within the project area, alternatives, including a "no action" alternative, will be developed for the Draft Environmental Impact Statement. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), will be conducted, if necessary, during the comment period on the Draft Environmental Impact Statement.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency published the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Also environmental objections that could be raised at the Draft Environmental Impact Statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft Environmental Impact Statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits

Permits required for implementation include the following:

1. U.S. Army Corps of Engineers

- Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
- Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;

2. Environmental Protection Agency

- General National Pollutant Discharge Elimination System Permit for Log Transfer Facilities in Alaska;
- Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Natural Resources

- Tideland Permit and Lease or Easement;
- Certification of Compliance with Alaska Water Quality Standards (401 Certification) Chapter 20;

4. Office of Project Management & Permitting (DNR)

- Coastal Zone Consistency Determination concurrence;

5. State of Alaska, Department of Environmental Conservation

- Solid Waste Disposal Permit.

Responsible Official

Forrest Cole, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and state the rationale in the Record of Decision.

(Authority: 40 CFR 1501.7 and 1508.22; *Forest Service Handbook 1909.15*, Section 21)

Dated: August 3, 2004.

Forrest Cole,

Forest Supervisor.

[FR Doc. 04–18915 Filed 8–17–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on August 26 at 6:30 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: August 26, 2004.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Brian Avery, Designated Federal Official (DFO), District Ranger Cabinet Ranger District, Kootenai National Forest at (406) 827–3533.

SUPPLEMENTARY INFORMATION: Agenda topics include reviewing the status of selected projects and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, Sanders County Ledger, Daily Interlake, Missoulian, and River Journal.

Dated: August 3, 2004.

Brian Avery,

DFO, Cabinet Ranger District, Kootenai National Forest.

[FR Doc. 04–18852 Filed 8–17–04; 8:45 am]

BILLING CODE 3410–11–M

ARMED FORCES RETIREMENT HOME

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Armed Forces Retirement Home.

ACTION: Notice.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.* and the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), the Armed Forces Retirement Home (AFRH) plans to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts from the proposed Master Development Plan for its campus located at 3700 North Capital Street, NW., in Washington, DC. AFRH also intends to initiate consultation under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, for the proposed Master Development Plan.

FOR FURTHER INFORMATION CONTACT: Craig Wallwork, AFRH, at (202) 730–3038. Please call this number if special assistance is needed to attend and participate in the scoping meeting.

SUPPLEMENTARY INFORMATION: The notice of intent is as follows:

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Master Development Plan for the Armed Forces Retirement Home in Washington, DC

The Armed Forces Retirement Home (AFRH) intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts from the proposed Master Development Plan for its campus located at 3700 North Capital Street, NW., in Washington, DC.

Background

Established in 1851, the AFRH in Washington, DC continues its mission as a retirement community for military veterans. The 276-acre site is currently developed with 93 structures including the U.S. Soldiers' and Airmen's Home National Landmark District.

In 2002, the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107, 24 U.S.C. 410, *et seq.*) gave the AFRH, with approval of the Secretary of Defense, authority to dispose of any property by sale, lease, or otherwise that is excess to the needs of the AFRH. Proceeds from such a disposal are to replenish the AFRH's Trust Fund. To implement this authority, AFRH is currently preparing a Master Development Plan for its 276-acre campus in Washington, DC that will guide the long-term use and development of the site.

Alternatives Under Consideration

AFRH will analyze the proposed action and no action alternatives for the proposed Master Development Plan. AFRH will analyze a range of alternatives for future development on the AFRH campus. These alternatives will include development of portions of the site for office, commercial, institutional, and residential uses. As part of the EIS, AFRH will study the impacts of each alternative on the human environment.

Scoping Process

In accordance with NEPA, a scoping process will be conducted to aid in determining the alternatives to be considered and the scope of issues to be addressed, as well as for identifying the significant issues related to the proposed Master Development Plan. Scoping will be accomplished through a public scoping meeting, direct mail correspondence to potentially interested individuals, agencies, and organizations, and meetings with agencies having an interest in the AFRH. It is important that Federal, regional, and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS.

The AFRH is also using the NEPA scoping to facilitate consultation with the public under Section 106 of the National Historic Preservation Act (36 CFR Part 800: Protection of Historic Properties). AFRH welcomes comments from the public to ensure that it takes into account the effects of its action on historic properties.

Public Scoping Meeting

The public scoping meeting will be held on September 9, 2004, from 6:30 to 8:30 p.m. at the Armed Forces Retirement Home–Sherman Building South located at 3700 N. Capital Street, NW., in Washington, DC. Photo identification will be required to enter the site, and security will direct visitors to available parking. The meeting will be an informal open house, where visitors may come, receive information, and give comments. AFRH will publish notices in the Washington Post and local newspapers announcing this meeting. AFRH will prepare a scoping report, available to the public, which will summarize the comments received and facilitate their incorporation into the EIS and Section 106 processes.

Written Comments

Agencies and the public are encouraged to provide written comments on the scoping issues in addition to or in lieu of giving their comments at the public scoping meeting. Written comments regarding the environmental analysis for the proposed Master Development Plan must be postmarked no later than September 17, 2004, and sent to the following address: Armed Forces Retirement Home, Attention: Craig Wallwork, 3700 North Capitol Street, NW., Washington, DC 20011, *craig.wallwork@afrh.gov.*

Dated: August 13, 2004.

Timothy Cox,

Chief Operating Officer, Armed Forces Retirement Home.

[FR Doc. 04–18896 Filed 8–17–04; 8:45 am]

BILLING CODE 8250–01–P

DEPARTMENT OF COMMERCE

[I.D. 081304A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Multispecies Framework Adjustment 40A Logbook Information Data Collection.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 2,533.

Number of Respondents: 997.

Average Hours Per Response: 15 minutes for an electronic vessel trip report.

Needs and Uses: The National Marine Fisheries Service is submitting the proposed rule to implement provisions contained within Framework Adjustment 40A to the Northeast Multispecies Fishery Management Plan. This submission requests clearance for the following provisions: (1) A Category B (regular) days-at-sea Pilot Program; (2) Closed Area I Hookgear Special Access Program (SAP); (3) Eastern United States/Canada SAP Pilot Program; and (4) Modifications to the Western United States/Canada Area Regulations.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: On occasion, annually, daily.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by August 25, 2004 to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David_Rostker@omb.eop.gov.*

Dated: August 11, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–18959 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 03–BIS–07]

Action Affecting Export Privileges; Aura Ltd.

Order

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having initiated an administrative proceeding against Aura Ltd. ("Aura") pursuant to section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2004)

("Regulations"),[1] and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401–2420 (2000)) ("Act"),[2] based on the amended charging letter issued to Aura that alleged that Aura committed five violations of the Regulations. Specifically, the charges are:

1. Five Violations of 15 CFR 764.2(b)—Aiding and Abetting an Export in Violation of the Regulations: Between on or about June 2, 1999 and on or about March 22, 2000, Aura aided and abetted the export of bone densitometer equipment items subject to the Regulations and the Iran Transactions Regulations, from the United States to Iran without prior authorization from the Office of Foreign Assets Control, U.S. Department of the Treasury, as required in Section 746.7 of the Regulations. Aura aided and abetted the illegal exports by transshipping the items from the United Kingdom to Iran to complete their shipment from the United States.

BIS and Aura having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this manner in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is therefore ordered:

First, that for a period of two years from the date of entry of this Order, Aura Ltd., 39 Rushdon Rd., Milton Ernest, Bedford, Bedfordshire, MK44 1RU, United Kingdom, its successors or assigns, and when acting for or on behalf of Aura, its officers, representatives, agents, or employees ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Aura by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202–4022, notifying the office that this case is withdrawn from adjudication, as provided by Section 766.18 of the Regulations.

Sixth, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 12th day of August 2004.

Julie L. Myers,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 04–18876 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–DT–M

[1] The violations charged occurred between 1999 and 2000. The Regulations governing the violations at issue are found in the 1999 and 2000 versions of the Code of Federal Regulations (15 CFR parts 730–774 (1999–2000)). The 2004 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (3 CFR, 2003 Comp. 328 (2004)), has continued the Regulations in effect under the IEEPA.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Zlatko Brkic

Order

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having notified Zlatko Brkic ("Brkic") of its intention to initiate an administrative proceeding against Brkic pursuant to section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2004)) ("Regulations"),[1] and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401–2420 (2000)) ("Act"),[2]

[1] The violations charged occurred in 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 CFR Parts 730–774 (1999)). The 2004 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the

Continued

based on the proposed charging letter issued to Brkic that alleged that Brkic committed two violations of the Regulations. Specifically, the charges are:

1. One Violation of 15 CFR 764.2(c)—Attempted export without a license: On or about September 29, 1999, Brkic attempted to export items subject to the Regulations (handcuffs covered by Export Control Classification Number 0A982) from the United States to Ekohemija DJL, in Sarajevo, Bosnia and Herzegovina, without the Department of Commerce license required by Section 742.7 of the Regulations.

2. One Violation of 15 CFR 764.2(e)—Acting With Knowledge of a Violation: On or about September 29, 1999, when Brkic attempted to transfer items subject to the Regulations (handcuffs covered by Export Control Classification Number 0A982) to Bosnia and Herzegovina as described above, Brkic had knowledge that a Department of Commerce license was required for the export.

BIS and Brkic having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is therefore ordered:

First, that a civil penalty of $20,000 is assessed against Brkic, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Brkic will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Brkic. Accordingly, if Brkic should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Brkic's export privileges for a period of one year from the date of entry of this Order.

Fourth, for a period two years from the date of entry of the Order, Zlatko Brkic, 5712 North Campbell, #2, Chicago, IL 60659–5116, his successors or assigns, and when acting for or on behalf of Brkic, his officers, representatives, agents, or employees ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fifth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Sixth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Brkic by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Seventh, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Eighth, that, as authorized by Section 766.18(c) of the Regulations, the $20,000 civil penalty set forth above shall be suspended in its entirety for one year from the date of this Order, and shall thereafter be waived, provided that during the period of suspension, Brkic has committed no violation of the Act or any regulation, order or license issued thereunder.

Ninth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 12th day of August 2004.

Julie L. Myers,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 04–18877 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–DT–M

Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (3 CFR, 2003 Comp. 328 (2004)), has continued the Regulations in effect under the IEEPA.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Security and Privacy Advisory Board; Request for Nominations

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Request for nominations of members to serve on the Information Security and Privacy Advisory Board.

SUMMARY: NIST invites and requests nominations of individuals for appointment to the Information Security and Privacy Advisory Board (ISPAB). NIST will consider nominations received in response to this notice for appointment to the Board, in addition to nominations already received.

DATES: The nomination period is open-ended.

ADDRESSES: Please submit nominations to Joan Hash, ISPAB Secretary, NIST, 100 Bureau Drive, M.S. 8930, Gaithersburg, MD 20899–8930. Nominations may also be submitted via fax to (301) 948–2733, Attn: ISPAB Nominations.

Additional information regarding the Board, including its charter and current membership list, may be found on its electronic home page at: *http://csrc.nist.gov/ispab/.*

FOR FURTHER INFORMATION CONTACT: Joan Hash, ISPAB Designated Federal Official, NIST, 100 Bureau Drive, M.S. 8930, Gaithersburg, MD 20899–8930; telephone (301) 975–3357; telefax: (301) 948–1233; or via e-mail at *joan.hash@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. ISPAB Information

The ISPAB was originally chartered as the Computer System Security and Privacy Advisory Board (CSSPAB) by the Department of Commerce pursuant to the Computer Security Act of 1987 (Pub. L. 100–235). As a result of the E-Government Act of 2002 (Pub. L. 107–347), Title III, the Federal Information Security Management Act of 2002, Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4, the Board's charter was amended. This amendment included the name change of the Board.

Objectives and Duties

The objectives and duties of the ISPAB are:

(1) To identify emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy.

(2) To advise the NIST, the Secretary of Commerce, and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including thorough review of proposed standards and guidelines developed by NIST.

(3) To annually report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

(4) To function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

Membership

The ISPAB is comprised of twelve members, in addition to the Chairperson. The membership of the Board includes:

(1) Four members from outside the Federal Government eminent in the information technology industry, at least one of whom is representative of small or medium sized companies in such industries;

(2) Four members from outside the Federal Government who are eminent in the fields of information technology, or related disciplines, but who are not employed by or representative of a producer of information technology equipment; and

(3) Four members from the Federal Government who have information system management experience, including experience in information security and privacy, at least one of these members shall be from the National Security Agency.

Miscellaneous

Members of the ISPAB are not paid for their service, but will, upon request, be allowed travel expenses in accordance with Subchapter I of Chapter 57 of Title 5, United States Code, while otherwise performing duties at the request of the Board Chairperson, while away from their homes or a regular place of business.

Meetings of the Board are two to three days in duration and are held quarterly. The meetings primarily take place in the Washington, DC metropolitan area but may be held at such locations and at such time and place as determined by the majority of the Board.

Board meetings are open to the public and members of the press usually attend. Members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

Nominations are being accepted in all three categories described above.

Nominees should have specific experience related to information security or electronic privacy issues, particularly as they pertain to Federal information technology. Letters of nominations should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category. Also include (where applicable) current or former service on Federal advisory boards and any Federal employment. Each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the ISPAB, and that they will actively participate in good faith in the tasks of the ISPAB.

Besides participation at meetings, it is desired that members be able to devote a minimum of two days between meetings to developing draft issue papers, researching topics of potential interest, and so forth in furtherance of their Board duties.

Selection of ISPAB members will not be limited to individuals who are nominated. Nominations that are received and meet the requirements will be kept on file to be reviewed as Board vacancies occur.

Nominees must be U.S. citizens.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse ISPAB membership.

Dated: August 11, 2004.

Hratch G. Semerjian,

Acting Director, NIST.

[FR Doc. 04–18853 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Monday, September 13, 2004, from 1 p.m. to 5:30 p.m. and Tuesday, September 14, 2004, from 8 a.m. to 2:15

p.m. The Visiting Committee on Advanced Technology (VCAT) is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST's activities; a review of NIST's performance evaluation system; an update on NRC's FY04–05 biennial assessment process of NIST laboratories; a VCAT panel discussion on the Management of Organizations with Remote Sites in the U.S.; and the NIST response to VCAT recommendations from the FY 2003 Annual Report. There also will be a presentation on NIST's studies to improve first responder communications and three laboratory tours in the areas of measurement science and biosystems and health. Discussions scheduled to begin at 1 p.m. and to end at 2 p.m., on September 13, and to begin at 11 a.m. and to end at 2:15 p.m. on September 14, 2004, on the NIST budget, planning information and feedback sessions will be closed. Agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Peters no later than Thursday, September 9, 2004, and she will provide you with instructions for admittance. Ms. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene September 13, 2004, at 1 p.m. and will adjourn at 2:15 p.m. on September 14, 2004.

ADDRESSES: The meeting will be held in the Radio Building, Room 1107 (seating capacity 60, includes 35 participants), at NIST, Boulder, Colorado. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 24, 2004, that portions of the meeting of the Visiting Committee on Advanced Technology which deal with discussion of sensitive budget and planning information that would cause harm to third parties if publicly shared be closed in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2.

Dated: August 11, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–18866 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Friday, September 17, 2004. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, select applicants for site visits, determine possible conflict of interest for site visited companies, review feedback to first stage applicants, begin stage III of the judging process, a discussion on long-term value and related information, a debriefing on the State and Local Workshop and a program update. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Virginia Davis no later than Monday, September 13, 2004, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is *virginia.davis@nist.gov* and her phone number is 301/975–2361.

DATES: The meeting will convene September 17, 2004, at 9 a.m. and adjourn at 3 p.m. on September 17, 2004. It is estimated that the closed portion of the meeting will last from 9 a.m. until 2 p.m. and the open portion of the meeting will last from 2 p.m. until 3 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 7, 2004, that part of the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: August 11, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–18854 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032801B]

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Crab Species Covered by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service, National Oceanic and

Atmospheric Administration, Commerce.

ACTION: Notice of second invitation to bid.

SUMMARY: The National Marine Fisheries Service issues this notice to inform the interested public that on August 6, 2004, the National Marine Fisheries Service issued a second invitation to bid in the fishing capacity reduction program for the crab species covered by the Fishery Management Plan for Bering Sea/Aleutian Islands king and tanner crabs.

ADDRESSES: Direct any questions about this notice to Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

Any person who wants to contact the National Marine Fisheries Service's Restricted Access Management Program (which issues crab species licenses) may do so at: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION: Section 144(d) of Division B of Public Law 106–554, as amended, authorized this fishing capacity reduction program (program). The program's objective is reducing harvesting capacity in the Bering Sea/Aleutian Islands crab fishery. This will help financially stabilize this limited-entry fishery and manage its fish.

The National Marine Fisheries Service (we) published proposed program regulations on December 12, 2002 (67 FR 76329). We published final program regulations on December 12, 2003 (68 FR 69331 *et seq.*). We published a notice of qualifying bidders and voters on December 22, 2003 (68 FR 71082 *et seq.*). We published a notice of the program's first invitation to bid on Feb 17, 2004 (69 FR 7421 *et seq.*).

After the bidding period for the program's first invitation to bid closed on April 23, 2004, we administered and then readministered a referendum about the fee needed to repay the program's reduction loan of about $100 million. The readministered referendum was unsuccessful. This resulted in all parties in the first round of bidding being excused from any obligations associated with the first bid offers or any reduction contracts. Subsequently, we decided to issue a second invitation to bid and hold a second referendum based on the results of a second round of bidding.

Interested persons should carefully review the final program regulations and other relevant program documents for full details about the program and the second round of bids. Interested persons may obtain the final program regulations and the other relevant documents from Michael L. Grable (see **ADDRESSES**). The final program regulations and other relevant documents are also posted on our website at <*http://www.nmfs.noaa.gov/ocs/financial_services/buyback.htm*>.

In addition to the final program regulations, our website contains:

(1) The program's Second Invitation to Bid;

(2) The program's Second Fishing Capacity Reduction Program Bid and Terms of Agreement; and

(3) Our August 6, 2004, bidding guidance letter which then transmitted the first two documents to 281 qualifying bidders.

This is a voluntary program. In exchange for reduction payments, accepted bidders permanently relinquish their fishing licenses and their fishing vessels' catch histories and fishing privileges.

The program's maximum cost cannot exceed $100 million. Should a second referendum prove successful, a 30–year loan will finance 100 percent of whatever the reduction's cost turns out to be. Future crab landing fees will repay the loan.

We attach, as addendum 1, a facsimile of the second invitation to bid (second invitation) which we sent on August 6, 2004, to 281 qualifying bidders. We also attach, as addendum 2, a facsimile of the second bidding form and terms of capacity reduction agreement (second reduction contract) which we also sent on August 6, 2204, to 281 qualifying bidders. Qualifying bidders who bid in response to the second invitation will use the bid form section of the second reduction contract to make their bid offers. These addenda state all other applicable bid submission requirements and procedures. All bidders must bid in strict accordance with the second invitation and second reduction contract. We may reject any bids which do not.

Bidding in response to the second invitation opened on August 6, 2004. This bidding will close at 5 p.m., Eastern Daylight Time, on September 24, 2004. We will not accept bids which our Financial Services Division in Silver Spring, MD receives after bidding closes.

We will reject any bid a bidder submits on any form other than the bidding form portion of the second reduction contract in the bidding package which we sent to the qualifying bidders or the bidding form portion of the second reduction contract attached hereto as addendum 1.

Potential bidders who first become qualifying bidders after August 6, 2004, may request a bidding package by contacting Michael L. Grable (see **ADDRESSES**). Alternatively, they may download from our web site the second invitation and the second reduction contract and use these for their bids.

After receiving their bidding packages, qualifying bidders (along with co-bidders where appropriate) who wish to bid in the program's second round of bidding must submit their irrevocable bid offers to our Silver Spring, MD Financial Services Division in time for that Division to have received them before bidding closes on September 24, 2004.

We will then score each bid amount of each responsive bid against the dollar value of the bidder's documented crab harvests during the bid scoring period. We will get each bidder's documented crab harvest data directly from the State of Alaska, and no bidder need attempt to include any crab harvest data in its bid.

We will, in a reverse auction, next accept each bid whose amount is the lowest percentage of the bidder's ex-vessel crab revenues during the bid scoring period until either the $100 million is fully committed or no other responsive bid remains to be accepted. Bid acceptances create reduction contracts between the United States and the bidders, subject to the condition subsequent that the second referendum approves the fee required to repay the potential reduction loan.

Next, we will conduct a second referendum, based on the results of the second round of bidding, about the crab landing fees required to repay the potential reduction loan. We will mail a voting package to each person then on, and at the address in, our qualifying voter list. This will include a detailed synopsis of accepted bids (e.g., capacities reduced, reduction costs, and prospective loan repayment fees) by area/species endorsement categories. It will also include a ballot as well as questions and answers about voting and other program details.

We anticipate that we will send second referendum ballots to qualifying voters on October 1, 2004. Qualifying voters may vote as soon as they receive the ballots. We anticipate mailing these on October 1, 2004. Second referendum voting will close at 5 p.m., Eastern Standard Time, on November 15, 2004.

Reduction contracts will become inoperable unless at least two thirds of the second referendum votes cast

approve the landing fee required to repay the reduction loan.

If the second referendum is successful, we will then mail a bid acceptance letter to each accepted bidder. This will be the bidder's first notification that we accepted its bid. The letter will also state that a successful referendum fulfilled the one condition subsequent to reduction contract performance.

We will next publish a reduction payment tender notice in the **Federal Register**. We anticipate doing this on November 22, 2004. Thirty days afterwards, we will tender reduction payments to accepted bidders and complete the program. We anticipate tendering reduction payments on December 22, 2004.

If the second referendum is unsuccessful, the program may then terminate.

Our notice of qualifying bidders and voters included only one license holder name and mailing address for each crab license listed. We note that some crab licenses are co-held by more than one person, corporation, or partnership. Where this is the case, our notice included only the co-holder, and its mailing address, whom the RAM Program's crab license database inferred as the designated contact for the other co-holders.

Nevertheless, all co-holders required to do so must sign each bid involving a co-held license. Even if a qualifying bidder's crab license is co-held, we mailed the bidding package only to the designated contact co-holder at the address specified in our notice. We are, however, also notifying the other co-holders that we have done so. Each designated contact co-holder will be responsible to ensure that all required co-holders sign the bid as the qualifying bidder. We will reject any bid involving a co-held license unless all co-holders required to sign the bid as the qualifying bidder do so.

Do not confuse the terms "co-holder" and "co-owner" with the term "co-bidder". Co-bidders are involved only when a bid's reduction/privilege vessel is owned by someone other than the qualifying bidder who holds the crab license included in the bid as the crab reduction permit. In each bid involving a co-bidder, the crab license holder or co-holders must sign the bid as the qualifying bidder and the reduction/privilege vessel owner or co-owners must sign the bid as a co-bidder. Like co-owned qualifying bidders, co-bidders who are co-owned must also have all co-owners who are required to sign the bid as the co-bidder do so.

Addendum 1 and addendum 2 hereto contain the following minor corrections of the second invitation to bid and the second reduction contract which we mailed to 281 qualifying bidders on August 6, 2004:

(1) In the second invitation, we struck the superfluous word "be" from the last paragraph of section VI;

(2) In the second invitation, we substituted the word "fully" for the word "full" in the fourth paragraph of section VIII; and

(3) In the second reduction contract, the seventeen words "Contract is effective as of the date NMFS accepts the Bidder's offer by signing the Reduction Contract" appear alone on page No. 20. The rest of page No. 20 is, without further explanation, blank. We repositioned these seventeen words to directly follow the last two words ("the Reduction") which appear in the partial sentence ending page No. 19. Consequently, page No 20 of the addendum's second reduction contract becomes what was Page No. 21 of the bid package's second reduction contract, and the former's page No. 21 becomes what was the latter's page No. 22.

These addendum changes to the second invitation and second reduction contract which we sent to 281 qualifying bidders on August 6, 2004, are non-substantive. Qualifying bidders bidding in this second round of program bidding may, consequently, do so either by using the uncorrected second reduction contract in the bidding packages which we sent them on August 6, 2004, or by downloading from our web site the corrected second reduction contract and using the corrected second reduction contract instead.

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117.

[The addenda will not be codified in the Code of Federal Regulations]

Dated: August 13, 2004.

Rebecca Lent,

Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

BILLING CODE 3510–22–C

ADDENDUM 1

SECOND INVITATION TO BID: FISHING CAPACITY REDUCTION PROGRAM FOR THE CRAB SPECIES COVERED BY THE FISHERY MANAGEMENT PLAN FOR BERING SEA / ALEUTIAN ISLANDS KING AND TANNER CRABS

I. Invitation:

The United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (herein referenced as "NMFS") hereby extends to qualifying bidders this second invitation to bid (herein referenced as the "Second Bid Invitation") in the fishing capacity reduction program (herein referenced as the "Program") for the crab species covered by the fishery management plan for Bering Sea/Aleutian Islands king and tanner crabs.

II. Definitions:

When used in the Second Bid Invitation and in the document entitled "SECOND FISHING CAPACITY REDUCTION PROGRAM BID AND TERMS OF AGREEMENT FOR CAPACITY REDUCTION: BERING SEA AND ALEUTIAN ISLANDS KING AND TANNER CRABS" (herein referenced as the "Second Reduction Contract"), the following terms have the same meaning as in 50 CFR § 600.1018, published on December 12, 2003, at 68 FR 69331-69342 (herein referenced as the "Final Rule"):

(a) Acceptance,

(b) Bid,

(c) Bid amount,

(d) Bidder,

(e) Bid crab,

(f) Bid score,

(g) Co-bidder,

(h) Crab,

(i) Crab license,

(j) Crab reduction permit,

(k) Non-crab reduction permit,

(l) Qualifying bidder,

(m) Reduction fishing interest,

(n) Reduction fishing privilege,

(o) Reduction/history vessel,

(p) Reduction/privilege vessel,

(q) Referendum, and

(r) Replacement vessel.

III. Governing Laws and Regulations:

§ 144 of Pub. Law 106-554, § 2201 of Pub. Law 107-20, and § 205 of Pub. Law 107-117 specifically authorize the Program. 16 U.S.C. §1861a (b)-(e) authorizes fishing capacity reduction programs in general. The Final Rule specifically governs the Program. 50 CFR §600.1000 et seq. are framework regulations governing fishing capacity reduction programs in general.

The Program, the Second Bid Invitation, and the Second Reduction Contract are subject to the laws and regulations this section III cites.

Prospective bidders should read these law and regulations, particularly the Final Rule which governs the Program's specific procedures and requirements.

IV. Bidder:

Each bid must have a qualifying bidder.

If the bid's reduction/history vessel is the same vessel as the bid's reduction/privilege vessel and the qualifying bidder is the owner of record of the reduction/privilege vessel, the qualifying bidder must bid alone.

If the bid's reduction/history vessel is not the same vessel as the bid's reduction/privilege vessel but the qualifying bidder is the owner of record of both vessels, the qualifying bidder must also bid alone.

If the bid's reduction/history vessel is not the same vessel as the bid's reduction/privilege vessel and the qualifying bidder is not the reduction/privilege vessel's owner of record, the reduction/privilege vessel's owner of record is the co-bidder and must bid together with the

qualifying bidder.

If the qualifying bidder or a co-bidder is co-owned by different persons or other legal entities, each of the qualifying bidder's co-owners must sign the bid on behalf of the qualifying bidder and each of the co-bidder's co-owners must sign the bid on behalf of the co-bidder.

V. Bidding Period:

Bidding opens on August 6, 2004, and closes on September 24, 2004.

Bidders may not submit bids before bidding opens on August 6, 2004.

Bidders must submit bids sufficiently before bidding closes on September 24, 2004, for NMFS (at the address specified in Second Bid Invitation section VI) to have marked its receipt of the bids no later than 5:00 P.M., Eastern Daylight Time, on September 24, 2004.

In the event of a Washington, DC, area emergency affecting U.S. mail or other deliveries to NMFS, NMFS will, in its sole discretion, make such accommodation of late bids as NMFS deems reasonably appropriate to the emergency's timing and nature and the degree of bid lateness.

VI. Bid Delivery:

Bidders must deliver bids to the following NMFS address:

Michael L. Grable
Chief, Financial Services Division
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Room 13100
1315 East-West Highway
Silver Spring, MD 20910

Bidders may deliver bids only by: U.S. mail, express or other delivery service, or personal delivery. NMFS assumes no risk of bid non-delivery or late delivery.

Bids delivered to NMFS must contain original bidder signatures.

VII. Bid Completion:

No bid may be made on any form other than the one (herein referenced as the "Bid Form") entitled "Fishing Capacity Reduction Bid Submission Form" which is provided as section 48 of the Second Reduction Contract.

No bidder should complete any Bid Form other than the one in the Second Reduction Contract accompanying this Second Bid Invitation.

Bidders may not alter, revise, or in any other way attempt to change the Second Reduction Contract terms and conditions. The Second Reduction Contract terms and conditions are non-negotiable, and NMFS will reject as non-responsive any bid which attempts to change them.

As otherwise specified in, and exactly in accordance with, the Second Reduction Contract, each bidder must complete the Bid Form by:

(a) Inserting, in the place provided at section 48.II.(a), the qualifying bidder's name(s) and the co-bidder's name(s) (if the bid requires a co-bidder),

(b) Inserting, in the place provided at section 48.II.(b), each bidder's address of record,

(c) Inserting, in the place provided at section 48.II.(c), each bidder's telephone number,

(d) Inserting, in the place provided at section 48.II.(d), each bidder's electronic mail address (if the bidder has one),

(e) Inserting, in the place provided at section 48.III, the bid's crab reduction permit number and including a photocopy of the permit,

(f) Inserting, in the place provided at section 48.IV, the bid's non-crab reduction permit number(s) (if the bid requires a non-crab reduction permit(s)) and the fishery(s) involved and including a photocopy of the permit(s),

(g) Inserting, in the place provided at section 48.V, the requested fishing history information for the bid's crab reduction permit and non-crab reduction permit(s),

(h) Inserting, in the place provided at section 48.VI, the official name and official number of the bid's reduction/privilege vessel and including a photocopy of the vessel's certificate of documentation,

(i) Inserting, in the place provided at section 48.VII, a bid amount, and

(j) Signing, in the place provided at section 48.VIII, the Second Reduction Contract and having a notary acknowledge and certify each signature.

VIII. Bid Submission And Effect:

After completing the Bid Forms, bidders must submit the full (all 22 pages) Second Reduction Contracts to NMFS. This includes the completed Bid Form together with the remainder of the Second Reduction Contract preceding the Bid Form. Each Bid Form is

subject to the Second Reduction Contract's full terms and conditions.

Delivering a Second Reduction Contract with a completed Bid Form to NMFS constitutes bid submission.

NMFS will deem each bid to have been submitted as of the receipt time and date which NMFS marks on each bid which NMFS receives at the address specified in Bid Invitation section VI.

Each bid submitted to NMFS constitutes the bidder's irrevocable offer to NMFS in accordance with the Second Reduction Contract's terms and conditions. No bidder should initiate delivery of its bid unless the bidder fully intends to make an irrevocable bid to NMFS.

Once each bidder initiates bid delivery, NMFS will neither intercept the bid and return it to the bidder nor comply with the bidder's request either to regard the bidder as not having submitted the bid or to return the bid unsubmitted to the bidder.

NMFS will regard as non-responsive each bid which a Bidder does not complete, submit, and deliver fully in accordance with the Second Bid Invitation and the Second Reduction Contract. Although NMFS has no obligation to do so, NMFS nevertheless may, in its sole discretion, contact any bidder in an attempt to remedy any bid deficiency which NMFS deems reasonably capable of remedy.

Any bidder's submission of a bid containing false information may subject the bidder to the substantial penalties provided in the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §1801, et seq., and other applicable law.

Once a bidder submits its bid, NMFS shall accept bids following a reverse auction. That acceptance is subject to the condition subsequent of a successful referendum.

Bidders are solely responsible for being aware of and understanding bidding's full legal effect. Before bidding, NMFS strongly suggests that bidders review with their legal advisers the governing law and regulations, the Second Bid Invitation, and the Second Reduction Contract. Bidders' failure to do so does not, however, affect the irrevocable nature of their bids.

IX. After Bid Submission:

After bidding closes, NMFS will, in the manner which the Final Rule provides:

(a) Score bids;

(b) Evaluate and accept bids, subject to the condition subsequent of a successful referendum;

(c) Conduct a referendum; and

(d) If the referendum is successful:

(1) Advise bidders of the referendum's results,

(2) Notify each bidder whether NMFS accepted or rejected its bid, and

(3) Complete the Program by:

(i) Publishing a reduction payment tender notice in the Federal Register,

(ii) Tendering reduction payment to accepted bidders,

(iii) Revoking, restricting, withdrawing, invalidating, or extinguishing by other means (as the case may be) each element of the reduction fishing interest,

(iv) Disbursing reduction payments in accordance with accepted bidders' written payment instructions, and

(v) Instituting, for post-reduction fish sellers and fish buyers in the reduction fishery, reduction loan fee payment and collection; or

(e) If the referendum is unsuccessful,

(1) Cease further Program activity, or

(2) Issue a new Bid Invitation and repeat the Program process following an invitation to bid.

Notification of acceptance or rejection constitutes final agency action.

After bidding, bidders must continue to be the owners, holders, or retainers (as the case may be) of record of each element of the reduction fishing interests in their bids unless or until:

(a) If the post-bidding referendum is unsuccessful, NMFS notifies the bidders that the referendum was unsuccessful, in which case no bidder need continue in this capacity;

(b) If the post-bidding referendum is successful, NMFS notifies rejected bidders that NMFS has rejected their bids, in which case no rejected bidder need continue in this capacity but each accepted bidder must continue in this capacity until NMFS revokes, restricts, withdraws, invalidates, or extinguishes by other means each element of the reduction fishing interest; or

(c) The irrevocable bid offers expire before either (a) or (b) occurs, in which case no bidder need continue in this capacity.

When, following a successful referendum, NMFS notifies each accepted bidder of NMFS' previous acceptance of the bidder's irrevocable bid offer, the Second Reduction Contract is then unconditional and all Second Reduction Contract parties must fulfill their Second Reduction Contract obligations.

When NMFS tenders reduction payment to each accepted bidder, all fishing with respect to each element of the accepted bidder's reduction fishing interest must forever cease and each accepted bidder must immediately retrieve all deployed fishing gear, whether or not the accepted bidder owns such gear, which anyone previously deployed from the accepted bidder's reduction/privilege vessel and return such gear to the shore.

Each bid will expire on March 31, 2005, unless NMFS has before such date notified the bidder in writing at the bidder's address of record that NMFS accepted the bidder's bid.

ADDENDUM 2

(OMB Control No. 0648-0376, Expiring 07/31/05)

SECOND FISHING CAPACITY REDUCTION PROGRAM BID AND TERMS OF AGREEMENT FOR CAPACITY REDUCTION: BERING SEA AND ALEUTIAN ISLANDS KING AND TANNER CRABS

THIS AGREEMENT, is entered into by and between the party or parties named in the portion of this document (herein referenced as the "Reduction Contract") entitled, "Fishing Capacity Reduction Bid Submission Form" (otherwise herein referenced as the "Bid Form"), as the qualifying bidder and as the co-bidder (if there is a co-bidder) (herein collectively referenced as the "Bidder") and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (herein referenced as "NMFS"). The Reduction Contract is effective when NMFS signs the Reduction Contract and, thereby, accepts the Bidder's offer, subject to the condition subsequent of a successful referendum.

WITNESSETH:

Whereas, NMFS has sent an Invitation to Bid (herein referenced as the "Bid Invitation") for the Fishing Capacity Reduction Program (herein referenced as the "Program") to qualifying bidders holding non-interim crab license limitation program licenses for one or more reduction endorsement fisheries and issued under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs;

Whereas, NMFS implements the Program pursuant to § 144 of Pub. Law 106-554; § 2201 of Pub. Law 107-20; § 205 of Pub. Law 107-117; as well as 16 U.S.C. §1861a (b)-(e) and other applicable law;

Whereas, in accordance with such authority, NMFS published a final Program rule (50 CFR § 600.1018) in the Federal Register (68 FR 69331-69342) (hereinafter referenced as the "Final Rule");

Whereas, NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to the Program, (50 CFR §600.1000 et seq.);

Whereas, the term "Reduction Fishery" is statutorily defined for the Program;

Whereas, NMFS can complete the Program only after a referendum approves an industry fee system for the Reduction Fishery;

Whereas, in direct response to the Bid invitation, the Bidder completes the Bid Form, the Bidder submits the Bid Form to NMFS, and the Bid Form is expressly subject to the

requirements of: the Reduction Contract terms and conditions, the Bid Invitation, the Final Rule, the framework regulations, and applicable law; and

Whereas, the Program's express objective is to permanently reduce harvesting capacity in the Reduction Fishery.

NOW, THEREFORE, for good and valuable consideration and the premises and covenants hereinafter set forth, the receipt and sufficiency of which the parties to the Reduction Contract hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are expressly incorporated herein by this reference.

2. Incorporation of Final Rule. The Final Rule is expressly incorporated herein by this reference. In the event of conflicting language, the rule takes precedence over the Reduction Contract.

3. Bid Invitation. The Bid Invitation requirements are expressly incorporated herein by this reference.

4. Bid Form. By completing the Bid Form and submitting the Reduction Contract of which the Bid Form is a part to NMFS in the manner the Bid Invitation requires, the Bidder hereby irrevocably offers to relinquish its reduction fishing interest and comply with all provisions of the Final Rule. If NMFS discovers any deficiencies in the Bidder's submission to NMFS, NMFS may, at its sole discretion, contact the Bidder in an attempt to correct such bid deficiency.

5. Crab Reduction Permit. In the Bid Form, the Bidder specifies, as a crab reduction permit, a valid non-interim crab license for one or more reduction endorsement fisheries and issued under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. The Bidder expressely acknowledges that it hereby offers to permanently surrender, relinquish, and have NMFS permanently revoke this crab reduction permit as well as any present or future claims of eligibility for any fishery privilege based upon the crab reduction permit.

6. Non-crab Reduction Permit(s). In the Bid Form, the Bidder specifies, as a non-crab reduction permit(s), any and all Federal permit(s), license(s), area and species endorsement(s), harvest authorization(s), or fishery privilege(s) for which the qualifying bidder was the holder of record on December 12, 2003, and which NMFS issued based on the fishing history of the Bidder's reduction/history vessel. The Bidder represents and warrants that the Bid Form includes every such permit for which the qualifying bidder was the holder of record on December 12, 2003. The Bidder hereby acknowleges that it offers to permanently surrender, relinquish, and have NMFS permanently revoke the non-crab

reduction permit(s), as well as any present or future claims of eligibility for any fishery privilege based upon the non-crab reduction permit(s).

7. Reduction Permit(s) Held by Qualifying Bidder. The Bidder represents and warrants that the qualifying bidder is the holder of record, according to NMFS' official fishing license records, at the time of bidding of the crab reduction permit and non-crab reduction pemit(s) which the Bidder specifies in the Bid Form.

8. Reduction/privilege Vessel. In the Bid Form, the Bidder specifies, as the reduction/privilege vessel, the vessel which was on December 12, 2003, designated on the crab reduction permit which the bidder also specifies in the Bid Form. The Bidder represents and warrants that the reduction/privilege vessel is neither lost nor destroyed at the time of bidding and that either the qualifying bidder or the co-bidder (if there is a co-bidder) is the vessel's owner of record, according to the National Vessel Documentation Center's official vessel documentation records, at the time of bidding.

9. Reduction Fishing Privilege. If the reduction/privilege vessel which the Bidder specifies in the Bid Form is Federally documented, the Bidder offers to relinquish and surrender the reduction/privilege vessel's reduction fishing privilege and consents to the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the reduction/privilege vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control--including the reduction/privilege vessel's: fisheries trade endorsement under 46 U.S.C. §12108; eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. §808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world. If the reduction/privilege vessel specified in the Bid Form is not a Federally documented vessel, the Bidder offers to promptly scrap the vessel and allow NMFS whatever access to the scrapping NMFS deems reasonably necessary to document and confirm the scrapping.

10. Retention of Reduction Fishing History. The Bidder expressly states, declares, affirms, attests, represents, and warrants to NMFS that the Bidder retains, and is fully and legally entitled to offer and dispose of hereunder, full and complete rights to the reduction/history vessel's full and complete reduction fishing history necessary to fully and completely comply with the requirements of section 11 hereof.

11. Reduction Fishing History. The Bidder surrenders, relinquishes, and consents to NMFS' permanent revocation of the following reduction fishing history:

I. Reduction vessels same. If the reduction/privilege vessel the Bidder specifies in the Bid Form is the same vessel as the qualifying bidder's reduction/history

vessel and the qualifying bidder is bidding alone without a co-bidder, the reduction fishing history is:

(a) The reduction/history vessel's full and complete documented harvest of crab,

(b) The reduction/history vessel's full and complete documented harvest of the non-crab species involved in the non-crab reduction permit(s) of which the qualifying bidder was the holder of record on December 12, 2003, and

(c) For any documented harvest of the reduction/history vessel, other than and in addition to that specified in this (a) and (b) of this subsection I, the qualifying bidder's right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and additional documented harvest which could ever qualify the qualifying bidder for any future limited access system fishing license, permit, and other harvest authorization of any kind; but without prejudice to any party unrelated to the qualifying bidder who before December 12, 2003, may have for value independently acquired the fishing history involving any such other and additional documented harvest; and

II. Reduction vessels different. If the reduction/privilege vessel the Bidder specifies in the Bid Form is not the same vessel as the qualifying bidder's reduction/history vessel and regardless of whether the qualifying bidder is bidding alone or jointly with a co-bidder, the reduction fishing history is:

(a) The reduction/history vessel's full and complete documented harvest of crab,

(b) The reduction/history vessel's full and complete documented harvest of the non-crab species involved in the non-crab reduction permit(s) of which the qualifying bidder was the holder of record on December 12, 2003,

(c) For any documented harvest of the reduction/history vessel, other than and in addition to that specified in (a) and (b) of this subjection II, the qualifying bidder's right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and additional documented harvest which could ever qualify the qualifying bidder for any future limited access system fishing license, permit, and other harvest authorization of any kind; but without prejudice to any party unrelated to the qualifying bidder who before December 12, 2003, may have for value independently acquired the fishing history involving any such other and additional documented harvest, and

(d) The reduction/privilege vessel's full and complete documented harvest of crab during the period in which either the reduction/privilege vessel was the vessel designated on the crab reduction permit or the crab reduction permit was otherwise used to authorize the reduction privilege/vessel's harvesting of crab.

12. Bid Amount. In the Bid Form, the Bidder specifies a bid amount in U.S. dollars. NMFS' payment to the bidder of a reduction payment in the exact amount of the bid amount is full and complete consideration for the Bidder's offer.

13. Additional Bid Form Elements. The bidder shall include with its bid an exact photocopy of the bid's reduction/privilege vessel's official vessel documentation or registration (i.e., the certificate of documentation the U.S. Coast Guard's National Vessel Documentation Center issues for Federally documented vessels or the registration a State issues for State registered vessels) and an exact photocopy of the bid's crab reduction permit and non-crab reduction permit(s), The Bidder shall also include with the bid all other information the Bid Form requires and otherwise comply with all other Bid Form requirements.

14. Use of Official Fishing License or Permit Databases. The Bidder expressly acknowledges that NMFS shall use the appropriate, offical, governmental fishing license or permit database to: determine the Bidder's address of record, verify the Bidder's qualification to bid, determine the holder of record of the bid's crab reduction permit and non-crab reduction permit(s), and verify the Bidder's inclusion in the bid of all such reduction permits associated with the reduction/history vessel and required to be offered in the bid.

15. Use of National Vessel Documentation Center Database. The Bidder expressly acknowledges that NMFS shall use the records of the National Vessel Documentation Center to determine the owner of record for a Federally documented reduction/privilege vessel and the appropriate State records to determine the owner of record of a non-Federally documented reduction/privilege vessel.

16. Bidder to Ensure Accurate Records. The Bidder shall, to the best of its ability, ensure that the records of the databases relevant to sections 14 and 15 hereof are true, accurate, and complete.

17. Bid Submissions Are Irrevocable. The parties hereto expressly acknowledge as the essence hereof that the Bidder voluntarily submits to NMFS this firm and irrevocable bid offer. The Bidder expressly acknowledges that it hereby waives any privilege or right to withdraw, change, modify, alter, rescind, or cancel any portion of its bid and that the receipt date and time which NMFS marks on the bid constitutes the date and time of the bid's submission.

18. Bidder Retains Bid Elements. After submitting a bid, the Bidder shall continue to hold, own, or retain unimpaired every aspect of the reduction fishing interest specified in the Reduction Contract until such time as: NMFS rejects the bid, NMFS notifies the bidder that the referendum was unsuccessful, NMFS tenders the reduction payment and the Bidder complies with its obligations under the Reduction Contract, NMFS otherwise excuses the Bidder's performance, or the

bid expires without NMFS first having notified the Bidder in writing that NMFS accepted the bid.

19. Bid Rejection. NMFS shall reject a bid which NMFS deems is in any way unresponsive or not in conformance with the Bid Invitation, the Reduction Contract, and the applicable law or regulations unless the Bidder corrects the defect and NMFS, in its sole discretion, accepts the correction.

20. Notarized Bidder Signature(s) Required. NMFS shall deem as nonresponsive and reject a bid whose Bid Form does not contain the notarized signatures of all persons required to sign the Bid Form on behalf of the Bidder.

21. Bid Rejections Constitute Final Agency Action. NMFS's bid rejections are conclusive and constitute final agency action as of the rejection date.

22. Effect of Bid Submission. Submitting a bid constituting an irrevocable offer and conforming to the requirements stated in the Bid Invitation and herein entitles the Bidder to have NMFS consider accepting the bid.

23. Reverse Auction. In accordance with applicable requirements, such as those stated in the the Bid Invitation, the Reduction Contract, the Final Rule and other regulations, and the applicable law, NMFS shall accept bids following a reverse auction, subject to the condition subsequent of a successful referendum.

24. Acceptance. The Bidder expressly acknowledges that NMFS' acceptance of the bid constitutes a Reduction Contract subject to the condition subsequent of successful referendum.

25. Referendum. The Bidder acknowledges that referendum approval of the industry fee system is an occurrence over which NMFS has no control.

26. Notification. If the referendum is successful, NMFS shall formally notify the Bidder in writing whether NMFS accepted or rejected the bid. Upon such notice, the Reduction Contract becomes enforceable against, and binding on, the parties. The parties shall be bound by the Reduction Contract terms and conditions. An unsuccessful referendum excuses all parties hereto from every obligation to perform under the Reduction Contract. In such event, NMFS need not tender reduction payment and the Bidder need not surrender and relinquish or allow the revocation or restriction of any element of the reduction fishing interest specified in the Bid Form. An unsuccessful referendum shall cause the Reduction Contract to have no further force or effect.

27. Reduction Contract Subject to Federal Law. The Reduction Contract is subject to Federal law.

28. Notice to Creditors. Upon NMFS' bid acceptance notice to the Bidder, the Bidder agrees to notify all parties with secured interests in the reduction/privilege vessel, the crab reduction permit, and the non-crab reduction permit(s) that the Bidder has entered into the Reduction Contract.

29. Bidder Responsibilities upon Successful Referendum. Upon NMFS' notifying the Bidder that the referendum was successful and that NMFS had accepted the Bidder's bid, the Bidder shall immediately become ready to surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the: crab reduction permit, non-crab reduction permit(s), reduction fishing privilege, and reduction fishing history.

30. Written Payment Instructions. After a successful referendum, NMFS shall tender reduction payment by requesting the Bidder to provide to NMFS, and the Bidder shall subsequently so provide, written payment instructions for NMFS' disbursement of the reduction payment to the Bidder or to the Bidder's order.

31. Request for Written Payment Instructions Constitutes Tender. NMFS' request to the Bidder for written payment instructions constitutes reduction payment tender, as specified in 50 C.F.R. 600.1011.

32. Bidder Responsibilities upon Tender. Upon NMFS' reduction payment tender to the Bidder, the Bidder shall immediately surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) its: crab reduction permit, non-crab reduction permit(s), reduction fishing privilege, and reduction fishing history. The Bidder must then return the originals of its crab reduction permit and non-crab reduction permit(s) to NMFS. Concurrently with NMFS' reduction payment tender, the Bidder shall forever cease all fishing for any species with the reduction/privilege vessel and immediately retrieve all fishing gear, irrespective of ownership, previously deployed from the reduction/privilege vessel.

33. Reduction/privilege Vessel Lacking Federal Documentation. Upon NMFS' reduction payment tender to the Bidder, the Bidder shall immediately scrap any vessel which the Bidder specified as a reduction/privilege vessel and which is documented solely under state law or otherwise lacks documentation under Federal law. The Bidder shall scrap such vessel at the Bidder's expense. The Bidder shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The Bidder shall conclude such scrapping within a reasonable time.

34. Future Harvest Privilege and Reduction Fishing History Extinguished. Upon NMFS' reduction payment tender to the Bidder, the Bidder shall surrender and relinquish and consent to the revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate), of any claim in any way related to any fishing privilege derived, in whole or in part, from the use

or holdership of the crab reduction permit and the non-crab reduction permit(s), from the use or ownership of the reduction/history vessel and the reduction/privilege vessel (subject to, and in accordance with, however, the provisions of section 11 hereof), and from any documented harvest fishing history arising under or associated with the same which could ever qualify the Bidder for any future limited access fishing license, fishing permit, and other harvest authorization of any kind.

35. Post Tender Use of Federally Documented Reduction Vessel. After NMFS' reduction payment tender to the Bidder, the Bidder may continue to use a Federally documented reduction/privilege vessel for any lawful purpose except fishing and may transfer--subject to all restrictions in the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law--the vessel to a new owner. The Bidder or any subsequent owner shall only operate the reduction/privilege vessel under the United States flag and shall not operate such vessel under the authority of a foreign country. In the event the Bidder fails to abide by such restrictions, the Bidder expressly acknowledges and hereby agrees to allow NMFS to pursue any and all remedies available to it, including, but not limited to, recovering the reduction payment and seizing the reduction/privilege vessel and scrapping it at the Bidder's expense.

36. NMFS' Actions upon Tender. Contemporaneously with NMFS' reduction payment tender to the Bidder, and without regard to the Bidder's refusal or failure to perform any of its Reduction Contract duties and obligations, NMFS shall: permanently revoke the Bidder's crab reduction permit and non-crab reduction permit(s); notify the National Vessel Documentation Center to permanently revoke the reduction/privilege vessel's fishery trade endorsement; notify the U.S. Maritime Administration to make the reduction/privilege vessel permanently ineligible for the approval of requests to place the vessel under foreign registry or operate the vessel under a foreign country's authority; record in the appropriate NMFS records that the reduction fishing history represented by any documented harvest fishing history accrued on, under, or as a result of the reduction/history vessel and the reduction/privilege vessel (subject to, and in accordance with, however, the provisions of section 11 hereof), the crab reduction permit, and the non-crab reduction permit(s) which could ever qualify the Bidder for any future limited access fishing license, fishing permit, or other harvesting privilege of any kind shall never again be available to anyone for any fisheries purpose; and implement any other restrictions the applicable law or regulations impose.

37. Material Disputes to be Identified. Members of the public shall, up until NMFS receives the Bidder's written payment instructions, be able to advise NMFS in writing of any material dispute with regard to any aspect of any accepted bid. Such a material dispute shall neither relieve the Bidder of any Reduction Contract duties or obligations nor affect NMFS' right to enforce performance of the Reduction Contract terms and conditions.

38. Reduction Payment Disbursement. Once NMFS receives the Bidder's written payment instructions and certification of compliance with the Reduction Contract, NMFS shall as soon as practicable disburse the reduction payment to the Bidder. Reduction payment disbursement shall be in strict accordance with the Bidder's written payment instructions. Unless the Bidder's written payment instructions direct NMFS to the contrary, NMFS shall disburse the whole of the reduction payment to the Bidder. If the qualifying bidder bids with a co-bidder, both the qualifying bidder and the co-bidder must approve and sign the written payment instructions.

39. Reduction Payment Withheld for Scrapping or for Other Reasons. In the event that a reduction/privilege vessel which is not under Federal documentation must be scrapped, NMFS shall withhold from reduction payment disbursement an amount sufficient to scrap such vessel. NMFS shall withhold such sum until the vessel is completely scrapped. NMFS may confirm, if NMFS so chooses, that the vessel has been scrapped before disbursing any amount withheld. If NMFS has reason to believe the Bidder has failed to comply with any of the Reduction Contract terms and conditions, NMFS shall also withhold reduction payment disbursement until such time as the Bidder performs in accordance with the Reduction Contract terms and conditions.

40. Bidder Assistance with Restriction. The Bidder shall, upon NMFS' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable NMFS' revocation, restriction, invalidation, withdrawal, or extinguishment by other means (as NMFS deems appropriate) of all components of the bid's reduction fishing interest in accordance with the requirments of the Bid Invitation, the Reduction Contract terms and conditions, the Final Rule, other applicable regulations, and the applicable law.

41. Recordation of Restrictions. Upon the reduction fishing privilege's revocation, the Bidder shall do everything reasonably necessary to ensure that such revocation is recorded on the reduction/privilege vessel's Federal documentation (which the National Vessel Documentation Center maintains in accordance with Federal maritime law and regulations) in such manner as is acceptable to NMFS and as shall prevent the reduction/privilege vessel, regardless of its subsequent ownership, from ever again being eligible for a fishery trade endorsement or ever again fishing. The term "fishing" includes the full range of activities defined in 16 U.S.C. §1802.

42. Reduction Element Omission. In the event NMFS accepts the bid and the Bidder has failed, for any reason, to specify in the Bid Form any crab reduction permit, non-crab reduction permit(s), reduction/privilege vessel, reduction fishing history, or any other element of the reduction fishing interest which the Bidder should under the Bid Invitation, the Reduction Contract, the Final rule, other applicable regulations, and the applicable law have specified in the Bid Form,

such omitted element shall nevertheless be deemed to be included in the Bid Form and to be subject to the Reduction Contract's terms and conditions; and all Reduction Contract terms and conditions which should have applied to such omitted element had it not be omitted shall apply as if such element had not been omitted. Upon the Bidder discovering any such omission, the Bidder shall immediately and fully advise NMFS of such omission. Upon either NMFS or the Bidder discovering any such omission, the Bidder shall act in accordance with the Bid Invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law.

43. Remedy for Breach. Because money damages are not a sufficient remedy for the Bidder breaching any one or more of the Reduction Contract terms and conditions, the Bidder explicitly agrees to and hereby authorizes specific performance of the Reduction Contract, in addition to any money damages, as a remedy for such breach. In the event of such breach, NMFS shall take any reasonable action, including requiring and enforcing specific performance of the Reduction Contract, NMFS deems necessary to carry out the Bid Invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law.

44. Waiver of Data Confidentiality. The Bidder consents to the public release of any information provided in connection with the Reduction Contract or pursuant to Program requirements, including any information provided in the Bid Form or by any other means associated with, or necessary for evaluation of, the Bidder's bid if NMFS finds that the release of such information is necessary to achieve the Program's authorized purpose. The Bidder hereby explicitly waives any claim of confidentiality otherwise afforded to financial, catch, or harvest data, as well as trade secrets, fishing histories, or other personal information, otherwise protected from release under 16 U.S.C. §1881a(b) or any other law. In the event of such information release, the Bidder hereby forever fully and unconditionally releases and holds harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act, or event arising from, out of, or in any way related to, the release of any information associated with the Program.

45. Oral Agreements Invalid. The Bid Invitation and Reduction Contract contain the final terms and conditions of the Reduction Contract between the Bidder and NMFS and represent the entire and exclusive agreement between them. NMFS and the Bidder forever waive all right to sue, or otherwise counterclaim against each other, based on any claim of past, present, or future oral agreement between them.

46. Severable Provisions. The Reduction Contract provisions are severable; and, in the event any portion ot the Reduction Contract is held to be void, invalid, non-

binding, or otherwise unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against the Bidder and NMFS.

47. Disputes. Any and all disputes involving the Bid Invitation, the Reduction Contract, and any other Program aspect affecting them shall in all respects be governed by the Federal laws of the United States; and the Bidder and all other parties claiming under the Bidder irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body which the applicable law authorizes to adjudicate such disputes.

48. Fishing Capacity Reduction Bid Submission Form.

I. Completion and submission. The Bidder must fully, faithfully, and accurately complete the Bid Form in this section 48 and thereafter submit the full and complete Reduction Contract to NMFS in accordance with the Bid Invitation and the Reduction Contract. If completing the Bid Form requires inserting more information than the Bid Form places provided for the insertion of such information provides, the Bidder should attach an addendum to the Bid Form which: includes and identifies the additional information, states that the addendum is a part of the Bid Form portion of the Reduction Contract, states (as a means of identifying the Reduction Contract to which the addendum relates) the NMFS license number designated on the Bid Form's crab reduction permit, and is signed by all persons who signed the Bid Form as the Bidder.

II. Bidder information.

(a) Bidder name(s). Insert in the place this subsection II.(a) provides the name(s) of the qualifying bidder and of the co-bidder (if there is a co-bidder), and check the appropriate column row for each name listed.

Each name the Bidder inserts must be the full and exact legal name of record of each person, partnership, or corporation bidding. If any reduction fishing interest element is co-owned by more than one person, partnership, or corporation, the Bidder must insert each co-owner's name.

In each case, the qualifying bidder is the holder of record, at the time of bidding, of the crab reduction permit and the non-crab reduction permit(s). A co-bidder is not allowed for either the crab reduction permit or the non-crab reduction permit(s). If the qualifying bidder is also the owner or record, at the time of bidding, of the reduction/privilege vessel, the qualifying bidder is the sole Bidder. If, however, the owner of record, at the time of bidding, of the reduction/privilege vessel is not exactly the same as the qualifying bidder, then the diffferent owner of record is the co-bidder; and the qualifying bidder and the co-bidder jointly bid together as the Bidder.

BIDDER NAME(S) If qualifying bidder or co-bidder consists of more than one owner, use one row of this column to name each co-owner. If not, use only one row for qualifying bidder and one row for any co-bidder.	Check appropriate column below for each name listed in 1st column	
	Qualifying bidder	Co-Bidder (if any)
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		

[Rest of page No. 12 intentionally left blank; continue to page No.13]

(b) Bidder address(s) of record. Insert in the place provided in this subsedtion II.(b) the qualifying bidder's and the co-bidder's (if there is a co-bidder) full and exact address(s) of record, and check the appropriate column row for each address listed.

BIDDER ADDRESS(S) **If qualifying bidder or co-bidder consists of more than one co-owner, use one row of this column for address of each co-owner. If not, use only one row for qualifying bidder and one row for any co-bidder.** ***Always use same row order as in Bidder name table in section 48.II.(a) above (i.e., address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.)***	**Check appropriate column below for each address listed in 1st column**	
	Qualifying bidder	**Co-Bidder (if any)**
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		

[Rest of page No. 13 intentionally left blank; continue to page No.14]

(c) Bidder business telephone number(s). Insert in the place this subsection II.(c) provides the qualifying bidder's and the co-bidder's (if there is a co-bidder) full and exact business telephone number(s), and check the appropriate column row for each number listed.

BIDDER TELEPHONE NUMBER(S) **If qualifying bidder or co-bidder consists of more than one co-owner, use one row of this column for telephone number of each co-owner. If not, use only one row for qualifying bidder and one row for co-bidder (if any).** ***Always use same row order as in Bidder name table in section 48.II.(a) above (i.e., telephone number (1) is for name (1), telepone number (2) is for name (2), telephone number (3) is for name (3), etc.)***	**Check appropriate column below for each number listed in 1st column**	
	Qualifying bidder	**Co-Bidder (if any)**
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		

[Rest of page No. 14 intentionally left blank; continue to page No.15]

(d) Bidder electronic mail address(s) (if available). Insert in the place this subsection II.(d) provides the qualifying bidder's and the co-bidder's (if there is a co-bidder) full and exact electronic mail address(s), and check the appropriate column row for each address listed.

BIDDER ELECTRONIC MAIL ADDRESS(S) **If qualifying bidder or co-bidder consists of more than one co-owner, use one row of this column for e-mail address of each co-owner. If not, use only one row for qualifying bidder and one row for co-bidder (if any).** ***Always use the same row order as in the Bidder name table in section 48.II.(a) above (i.e., e-mail address (1) is for name (1), e-mail address (2) is for name (2), e-mail address (3) is for name (3) etc.)***	**Check appropriate column below for each address listed in 1st column**	
	Qualifying bidder	**Co-Bidder (if any)**
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		

III. Crab license number for crab reduction permit. Insert in the place this subsection III provides the full and exact license number which NMFS designated on the crab license which the qualifying bidder specifies in the Bid Form as the crab reduction permit. Enclose with the Bid Form an exact photocopy of such license.

LICENSE NUMBER OF CRAB LICENSE SPECIFIED AS BID'S CRAB REDUCTION PERMIT

[Rest of page No. 15 intentionally left blank; continue to page No.16]

IV. License number(s) for non-crab reduction permit(s) (if there is a non-crab reduction permit(s)). Insert in the place this subsection IV provides the fishery(s) involved in, and the full and exact license number(s) which NMFS designated on the license(s) which the qualifying bidder specifies in the Bid Form as the non-crab reduction permit(s). Enclose with the Bid Form an exact photocopy of each such license.

LICENSE NUMBER(S) AND FISHERY(S) OF LICENSE(S) SPECIFIED AS NON-CRAB REDUCTION PERMIT(S)	
License Number(s)	**Fishery(s)**

V. Reduction Fishing History. For all reduction fishing history which the Reduction Contract requires the Bidder to include in the bidder's reduction fishing interest, insert in the place this subsection V provides the chronological and other information which each column heading therein requires. The information required does not include any actual landing data. Any bidder whose crab reduction permit is a crab license whose issuance NMFS based on the crab fishing history of a lost or destroyed vessel plus a replacement vessel must insert information meeting the requirements of Final Rule section 600.1018(i)(2). Any bidder whose crab reduction permit is a crab license whose issuance NMFS in any part based on the crab license holder's acquisition of crab fishing history from another party must insert information meeting the requirements of Final Rule section 600.1018(i)(3).

LICENSE NO. OF EACH CRAB AND EACH NON-CRAB REDUCTION PERMIT IN SECTION 48. III AND 48.IV	FOR EACH PERMIT IN 1ST COLUMN: FROM/TO DATE OF EACH FISHING HISTORY BIDDER POSSESSES	FOR EACH FISHING HISTORY IN 2ND COLUMN	
		If Bidder owned vessel giving rise to fishing history, name(s) and official number(s) of each vessel involved	If Bidder acquired fishing history from another party, name of party, manner in which acquired, and date acquired
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			

VI. Reduction/privilege vessel. Insert in the place this subsection VI provides the full and exact official name and official number which the National Vessel Documentation Center designated for the reduction/privilege vessel which the qualifying bidder or the co-bidder (if there is a co-bidder) specifies in the Bid Form, and check the column appropriate for the vessel's ownership of record. Enclose with the Bid Form an exact photocopy of such vessel's official certificate of doumentation.

REDUCTION/PRIVILEGE VESSEL		Check appropriate ownership column below	
Official Name	Official Number	Qualifying bidder	Co-bidder (if any)

VII. Bid Amount. Insert in the place this subsection VII provides the Bidder's full and exact bid amount, both in words and in numbers.

BID AMOUNT (U.S. DOLLARS)	
In words	In numbers

VIII. Reduction Contract signature.

In compliance with the Bid Invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law, the Bidder submits the Bid Form and the Reduction Contract of which the Bid Form is a part as the Bidder's irrevocable bid offer to NMFS for the permanent surrender and relinquishment and revocation, restriction, withdrawl, invalidation, or extinguishment by other means (as NMFS deems appropriate) of the crab reduction permit, any non-crab reduction permit(s), the reduction/privilege vessel's reduction fishing privilege, and the reduction/history vessel's reduction fishing history--all as identified in the Bid Form and the Reduction Contract or as required under the Final Rule, other applicable regulations, or the applicable law.

The Bidder expressly acknowledges that NMFS' acceptance of the Bidder's bid offer hereunder and NMFS' tender, following a successful referendum, of a reduction payment in the same amount as the bid amount specified in subsection VII of this section (less any sum withheld for scrapping any reduction/privilege vessel lacking Federal documentation or for any other purpose) to the Bidder shall, among other things, render the reduction/privilege vessel permanently ineligible for

any fishing worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and shall impose or create other legal and contractual restrictions, impediments, limitations, obligations, or other provisions which restrict, revoke, withdraw, invalidate, or extinguish by other means (as NMFS deems appropriate) the complete reduction fishing interest and any other fishery privileges or claims associated with the crab reduction permit, any non-crab reduction permit(s), the reduction/history vessel, the reduction/privilege vessel, and the reduction fishing history--all as more fully set forth in the Bid Invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law.

By completing and signing the Bid Form, the Bidder expressly acknowledges that the Bidder has fully and completely read the entire Bid Invitation and Reduction Contract. The Bidder expressly states, declares, affirms, attests, warrants, and represents to NMFS that the Bidder is fully able to enter into the Reduction Contract and that the bidder legally holds, owns, or retains, and is fully able under the Reduction Contract provisions to offer and dispose of, the full reduction fishing interest which the Reduction Contract specifies and the Bid Invitation, the Final Rule, the other applicable regulations, and the applicable law requires. Any person or entity completing the Bid Form and/or signing the Bid Form on behalf of another person or entity, expressly attests, warrants, and represents to NMFS that such completing and/or signing person or entity has the express and written permission or other grant of authority to bind such other person or entity to the Reduction Contract's terms and conditions. The Bidder expressly attests, warrants, and represents to NMFS that every co-owner of the Bidder necessary to constitute the Bidder's full and complete execution of the Reduction Contract has signed the Reduction Contract in the place this subsection VIII provides. The Bidder expressly attests, warrants, and represents to NMFS that the Bidder: fully understands the consequences of submitting the completed Bid Form and the Reduction Contract of which it is a part to NMFS; pledges to abide by the terms and conditions of the Reduction Contract; and is aware of, understands, and consents to, any and all remedies available to NMFS for the Bidder's breach of the Reduction Contract or submission of a bid which fails to conform with the Bid invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law. The Bidder expressly attests, warrants, and represents to NMFS that all information which the Bidder inserted in the Bid Form is true, accurate, complete, and fully in accordance with the Bid Invitation, the Bid Form instructions for such insertions, the Reduction Contract of which the Bid Form is a part, the Final Rule, other applicable regulations, and the applicable law

IN WITNESS WHEREOF, the Bidder has, in the place this subsection VIII provides, executed the Bid Form (and, accordingly, the Reduction Contract) either as a qualifying bidder bidding alone or as a qualifying bidder and a co-bidder (if there is a co-bidder) jointly bidding together, in accordance with the requirements specified above, and on the date written below. The Reduction Contract is effective as of the date NMFS accepts the Bidder's offer by signing the Reduction Contract.

The qualifying bidder and the co-bidder (if there is a co-bidder) must each sign the Bid Form exactly as instructed herein. Each co-owner (if there is a co-owner) of each qualifying bidder or co-bidder (if there is a co-bidder) must also sign the Bid Form exactly as instructed herein. A notary public must, for each person or entity signing on behalf of the Bidder, complete and sign the acknowledgement and certification provision associated with each such person or entity's Bid signature.

(a) Qualifying bidder's and co-bidder's (if there is a co-bidder) signature(s) and notary's acknowledgement(s) and certification(s).

BIDDER'S SIGNATURE AND NOTARY'S ACKNOWLEDGEMENT AND CERTIFICATION.

If qualifying bidder or co-bidder consists of more than one owner, use one row of 1st column for each co-owner's signature. If not, use only one row for qualifying bidder and one row for co-bidder (if any).

Always use same Bidder row order as in Bidder name table in section 48.II.(a) above (i.e., signature (1) is for name (1), signature (2) is for name (2), signature (3) is for name (3), etc.)

BIDDER SIGNATURE *(1) Sign. (2) Print: (a) signer's name, (b) signer's title (if signing for corporation or partnership), and (c) signing date.*	*Check appropriate column for each signature in 1st column*		*NOTARY SIGNATURE* *(1) Sign. (2) Print: (a) name, (b) signing date, (3) date commission expires, and (4) state and county. Each notary signature attests to following: "I certify that I know or have satisfactory evidence that the person who signed in the 1st column of this same row is the person who appeared before me and: (1) acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged he/she did so freely and voluntarily."*
	Qualifying bidder	*Co-bidder (if any)*	
(1)			
(2)			

---------- CONTINUED, WITH SAME COLUMN HEADINGS, FROM SUBSECTION VIII.(a) TABLE ON PAGE NO. 20 -------			
(3)			
(4)			
(5)			
(6)			

(b) United States of America's signature.

United States of America,
Acting by and through the Secretary of Commerce,
National Oceanic and Atmospheric Administration,
National Marine Fisheries Services

By _____ Date: _____
Michael L. Grable, Chief
Financial Services Division

[FR Doc. 04–18957 Filed 8–17–04; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081204A]

Draft NOAA Shrimp Issues and Options Paper; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The National Marine Fisheries Service (NOAA Fisheries) is hosting public meetings to present the results of an analysis of different options and alternatives that may help resolve current financial and market industry challenges. The analysis was developed at the request of the shrimp industry and other interested parties. The options will be presented in their entirety and the results from those that could be analyzed will be presented. Public comment on the analysis will be taken at the meetings. See **DATES** and **ADDRESSES** for specific dates, times and locations of the meetings.

DATES: The meetings held on Wednesday September 1st and Thursday September 2nd are scheduled to start at 9:30 a.m. and end at 4:00 p.m. Additional meetings were scheduled for Aug. 23–24 in Houston; Aug. 25 in Tampa; Aug. 27th in Charleston, SC; and Aug. 28th in New Bern, NC.

ADDRESSES: The meeting September 1st will be held at the New Orleans Airport Plaza Hotel and Conference Center, 2150 Veterans Blvd, Kenner, LA 70062; the meeting September 2nd will be held at the Mississippi Dept. of Marine Resources, Eldon Bolton State Office Building, 1141 Bayview Avenue, Biloxi, Miss. 39530.

FOR FURTHER INFORMATION CONTACT: Gordon J. Helm, Deputy Director, Office of Constituent Services. Telephone (301) 713–2379.

SUPPLEMENTARY INFORMATION: The primary goal of the meeting is to present the analysis and collect public input on the DRAFT shrimp industry issues and options included in the paper. Copies of the DRAFT paper will be available at the meetings and will also be available online beginning 11 a.m. EST August 23, 2004, at: www.nmfs.noaa.gov/mediacenter. Those interested in obtaining a copy after the meetings may contact Dr. John Ward, Economist. Telephone (301) 713–2379.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. John Ward at (301) 713–2379 at least 5 days prior to the meeting date.

Dated: August 12, 2004.

Gordon J. Helm,

Deputy Director, Office of Constituent Services, National Marine Fisheries Service.

[FR Doc. 04–18964 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081104J]

Endangered Species; File No. 1449

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Christine A. Tomichek, Kleinschmidt Associates, Kleinschmidt Building, 35 Pratt Street, Essex, Connecticut, 06426, has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 17, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1449.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The purpose of the proposed study is to conduct research on the impacts of the hydroelectric facility's activities on shortnose sturgeon in the Connecticut River as part of the Holyoke Hydroelectric Project (FERC No. 2004) license renewal. Limited evidence suggests that shortnose sturgeon may migrate downstream during high flow events; however, information is lacking with regards to time of year or time of day that the migration might occur. To address these objectives, the researchers are requesting authorization to conduct three projects. In the first project, 30 captively bred juvenile sturgeon would be externally tagged with a radio tag, released into the canal, tracked and recaptured after exiting the canal. In the second project, 20 adult sturgeon would be captured annually for four years via trawls and gillnets, measured, weighed, tagged with PIT and external radio tags, released and tracked. In the third project, 200 eggs and larvae would be captured via D-nets and preserved to evaluate spawning behavior. This permit would be authorized for five years from date of issuance.

Dated: August 12, 2004.

Carrie W. Hubard,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–18955 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Disclosure Document Program

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its

continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 18, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail: Susan.Brown@uspto.gov.* Include "0651–0030 comment" in the subject line of the message.
- *Fax:* 703–308–7407, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 703–308–5107; or by e-mail at *bob.spar@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

A service provided by the USPTO is the acceptance and preservation for two years of a "disclosure document" as evidence of the date of conception of an invention. A disclosure document is a paper disclosing an invention, signed by the inventor or inventors, and submitted to the USPTO. The document should contain a clear and complete explanation of the manner and process of making and using the invention in sufficient detail to enable a person having ordinary knowledge in the field of the invention to make and use the invention. The disclosure document request must be accompanied by a separate signed cover letter stating that it is submitted by, or on behalf of, the inventor, and requesting that the material be received into the Disclosure Document Program. These documents will be kept in confidence by the USPTO without publication in accordance with 35 U.S.C. 122(b).

The disclosure document will be preserved by the USPTO for two years after its receipt, and then destroyed unless it is referred to in a separate letter in a related patent application filed within the two year period. The disclosure document is not a patent application, and the date of its receipt in the USPTO will not become the effective filing date of any patent application subsequently filed.

The information supplied to the USPTO by an applicant seeking to prove the date of conception for an invention is used by the USPTO as evidence of the date of conception of an invention.

There is one form associated with this information collection, Form PTO/SB/95, Disclosure Document Deposit Request.

II. Method of Collection

By mail, facsimile, or hand carried to the USPTO when the inventor desires to participate in the Disclosure Document Program.

III. Data

OMB Number: 0651–0030.

Form Number(s): PTO/SB/95.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the Federal government; and State, local or tribal governments.

Estimated Number of Respondents: 22,225 responses.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 12 minutes, depending upon the complexity of the situation, to gather, prepare, and submit a disclosure document deposit request.

Estimated Total Annual Respondent Burden Hours: 4,445 hours.

Estimated Total Annual Respondent Cost Burden: $1,271,270. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional hourly rate of $286 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be $1,271,270 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Disclosure Document Deposit Request	12 minutes ..	22,225	4,445
TOTAL	.....	22,225	4,445

Estimated Total Annual Non-hour Respondent Cost Burden: $235,585. There are no capital start-up, maintenance or recordkeeping costs associated with this information collection.

There is annual non-hour cost burden in the way of a filing fee for the disclosure document deposit request. Following is a chart listing this filing fee/non-hour cost burden. The total annual filing fee/non-hour cost burden is estimated to be $222,250.

Item	Responses (a)	Filing fee ($) (b)	Total non-hour cost burden (a) × (b)
Disclosure Document Deposit Request	22,225	$10.00	$222,250.00
TOTAL	22,225	10.00	222,250.00

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 60 cents and that up to 22,225 submissions will be mailed to the USPTO per year. The total estimated postage cost for this collection is $13,335.

The total non-hour respondent cost burden for this collection in the form of filing fees and postage costs is estimated to be $235,585.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: August 12, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–18929 Filed 8–17–04; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

August 16, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a petition for a determination that certain woven, 100 percent cotton, napped fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On August 12, 2004, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, napped fabrics, of the specifications detailed below, classified in subheading 5209.31.60.50 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that shirts, trousers, nightwear, robes, dressing gowns and woven underwear of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by September 2, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On August 12, 2004, the Chairman of CITA received a petition on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, napped fabrics, of the specifications detailed below, classified HTSUS subheading 5209.31.60.50, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for certain apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Fabric 1

Petitioner Style No:	62BU1600240A
HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	291.5 g/m2
Width:	160 centimeters cuttable
Thread Count:	24.41 warp ends per centimeter; 16.53 filling picks per centimeter; total: 40.94 threads per square centimeter
Yarn Number:	Warp: 25.4 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 14.04 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 2

Petitioner Style No:	62BU1600240B
HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	305 g/m2
Width:	160 centimeters cuttable
Thread Count:	24.41 warp ends per centimeter; 18.11 filling picks per centimeter; total: 42.52 threads per square centimeter
Yarn Number:	Warp: 25.4 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 13.95 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

The petitioner emphasizes that the fabrics must be napped on both sides, that the yarn sizes and thread count, and consequently, the weight of the fabrics must be exactly or nearly exactly as specified or the fabrics will not be suitable for their intended uses. The warp yarns must be ring spun in order to provide the additional tensile strength required to offset the degrading effects of heavy napping on both sides. The filling yarns must be open end spun to provide required loft and softness.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than September 2, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a

timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–19018 Filed 8–16–04; 2:17 pm]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, September 3, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–19038 Filed 8–16–04; 2:01 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, September 10, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–19039 Filed 8–16–04; 2:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, September 17, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–19040 Filed 8–16–04; 2:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, September 24, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–19041 Filed 8–16–04; 2:00 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University.

ACTION: Board of visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at Defense Acquisition University, Fort Belvoir, VA. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: September 8, 2004 from 0900–1500.

ADDRESSES: Packard Conference Center, Defense Acquisition University, Bldg. 184, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Cizmadia at 703–805–5134.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Patricia Cizmadia at 703–805–5134.

Dated: August 11, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–18874 Filed 8–17–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on September 14, 2004 from 0930 to 2000 and September 15, 2004 from 0830 to 1500.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463. as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: August 11, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–18873 Filed 8–17–04; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is proposing to amend seven systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The administrative amendments being made to the notices reflect the Department of the Army's General Order No. 7, whereby the 'U.S. Total Army Personnel Command of Alexandria, VA.' and the 'U.S. Army Reserve Personnel Command of St Louis, MO.' were inactivated, and replaced with the 'U.S. Army Human Resources Command'. General Order No. 7 became effective October 2, 2003.

DATES: This proposed action will be effective without further notice on September 17, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, 7701 Telegraph Road, Alexandria, VA 22315–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6504.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 11, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–8–104b TAPC

SYSTEM NAME:

Official Military Personnel Record (January 6, 2004, 69 FR 790).

Change

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0608–8–104b AHRC'.

* * * * *

A0600–8–104b AHRC

SYSTEM NAME:

Official Military Personnel Record.

SYSTEM LOCATION:

U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400 for active Army officers.

U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301 for active duty enlisted personnel.

U.S. Army Human Resources Command, 9700 Page Avenue, St Louis, MO 63132–5200 for reserve personnel.

National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St Louis, MO 63132–5100, for discharged or deceased personnel.

An automated index exists at the U.S. Army Human Resources Command showing physical location of the Official Military Personnel of retired, separated and files on all service members returned to active duty.

National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382, for commissioned, warrant officer or enlisted soldier in the Army National Guard.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members of the U.S. Army and Army National Guard not on active duty, who are enlisted, appointed, or commissioned status; members of the U.S. Army who were enlisted, appointed, or commissioned and were separated by discharge, death, or other termination of military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Department of Veterans Affairs benefit forms; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security clearance questionnaire; application/memo for retired pay; application for correction of military records; field/application for active duty; transfer or discharge report/Certificate of Release or Discharge from Active Duty; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks, consent/declaration of parent/guardian; Army Reserve Officers Training Corps supplemental agreement; award recommendations; academic reports; line of duty casualty report; U.S. field medical card; retirement points, deferment; pre-induction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment; enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, 10 U.S.C. section 815 appellate actions; determinations of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review by physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit transcripts; flight status board reviews; assignment agreements, limitations/waivers/election and travel; efficiency appeals; promotion/reduction/recommendations, approvals/declinations announcements/notifications, reconsiderations/worksheets elections/letters or memoranda of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, in-service details, determinations, reliefs, component; awards, pay entitlement, released, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606; DoD Instruction 1030.1, Victim and Witness Assistance; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).

PURPOSE(S):

These records are created and maintained to manage the member's Army and Army National Guard service effectively, to document historically a member's military service, and

safeguard the rights of the member and the Army.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attaché assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs:

1. To provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

2. To provide information relating to authorized research projects.

To the U.S. Citizenship and Immigration Service to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbormaster for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, graduate record examination tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number, to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG), U.S. Army, and Army National Guard when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management Agency to facilitate participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DoD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media and fiche.

RETRIEVABILITY:

By Social Security Number and name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent. They are retained in active file until termination of service, following which they are retired to the U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Command, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of National Guard should be sent to the Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of National Guard should be sent to the Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, enlistment appointment or commission related forms pertaining to individual's military status; educational and financial institutions, training or qualifications records acquired prior to or during military services; law enforcement agencies, references provided by individuals, Army records reports, correspondence, forms, documents and other relevant papers, third parties and members of the public when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0614–200 TAPC

SYSTEM NAME:

Classification and Reclassification of Soldiers (November 28, 2001, 66 FR 59410).

Change

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0614–200 AHRC'.

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A0614–200 AHRC

SYSTEM NAME:

Classification and Reclassification of Soldiers.

SYSTEM LOCATION:

U.S. Army Human Resources Command, Reclassification Management Branch, 2461 Eisenhower Avenue, Alexandria, VA 22331–0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Army, Army National Guard and U.S. Army Reserve enlisted members on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, grade, military occupational specialty (MOS), additional information substantiating the soldier's or Army's request for exception to or interpretation of regulatory guidance for the classification, reclassification or utilization of soldiers, Personnel Actions Request, Enlisted Records Brief, MOS and Medical retention board documents and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 614–200, Enlisted Assignments and Utilization Management; and E.O. 9397 (SSN).

PURPOSE(S):

To perform the objective of maintaining a balance of authorization versus requirements by military occupational specialty within each career management field.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's

compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's Social Security Number and surname.

SAFEGUARDS:

Records are accessed only by designated officials having official need therefore in the performance of official duties. Records are kept in file cabinets in locked rooms. Building housing records are protected by security guards.

RETENTION AND DISPOSAL:

MOS classification board proceeding documents and related information maintain for 2 years then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, Reclassification Management Branch, 2461 Eisenhower Avenue, Alexandria, VA 22331–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, Public Affairs Office, Freedom of Information Act and Privacy Act, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, Public Affairs Office, Freedom of Information Act and Privacy Act, 200 Stovall Street, Alexandria, VA 22332–0400

Individual should provide the full name, Social Security Number, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army personnel records and reports, and automated personnel systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0621–1 TAPC

SYSTEM NAME:

Civilian Schooling for Military Personnel (March 13, 2001, 66 FR 14558).

Change

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0621–1 AHRC'.

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A0621–1 AHRC

SYSTEM NAME:

Civilian Schooling for Military Personnel.

SYSTEM LOCATION:

U.S. Army Human Resources Command, Chief, Civilian Education, 200 Stovall Street, Alexandria, VA 22332–0400. Segments exist at Army commands/installations, organizations/activities, including overseas areas. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Active Duty Army, Army National Guard and Army Reserve member who applies for or is selected for attendance at civilian school or for training with industry, or participation in a fellowship/scholarship program of training or instruction.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains Department of the Army Forms 1618–R, Application for Detail as Student Officer in a Civilian Educational Institution of Training with Industry Program; 2593–R, Application for Selection for Scientific and Engineering Graduate School; and 3719–R, Information Questionnaire for Recipients of Top Five Percent Army Fellowship (ROTC and U.S.MA), containing name, grade, Social Security Number, address, home phone, duty phone, permanent legal address, branch of service, date of birth, marital status, number of dependents, state of legal residence, military occupational specialties, enlistment status, component, foreign service, civilian educational data, military educational data, transcripts, social fraternities, honorary fraternities, clubs, degree major, class standing and personal resumes, school contracts; student training report; photographs; enlisted qualification record; theses; statements of service and schooling obligation; U.S. Armed Forces Institute test report; civilian institution academic evaluation reports, Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal, similar relevant documents and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 4301; and E.O. 9397 (SSN).

PURPOSE(S):

To document, monitor, manage, and administer the service member's attendance at a civilian training agency or civilian school.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel and only in the performance of assigned duties. Use of automated systems requires user identification and passwords granted to authorized personnel responsible for the administration and processing of individual student data.

RETENTION AND DISPOSAL:

Destroyed by shredding after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, Chief, Civilian Education, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is

contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0411.

Individual should provide the full name, Social Security Number, current address and telephone number, sufficient details concerning the civilian school attended to permit locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0411.

Individual should provide the full name, Social Security Number, current address and telephone number, sufficient details concerning the civilian school attended to permit locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, documents from the civilian school or industry training agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–5 TAPC

SYSTEM NAME:

Separation Transaction Control/ Records Transfer System (January 8, 2001, 66 FR 1314).

Change

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0635–5 AHRC'.

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A0635–5 AHRC

SYSTEM NAME:

Separation Transaction Control/ Records Transfer System.

SYSTEM LOCATION:

Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478;

U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301;

U.S. Army Human Resources Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty enlisted and reserve personnel separated from military service (excluding active duty for military for training) and all personnel immediately re-enlisting after separation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, rank, eligibility for re-enlistment, character of separation, program designator, date and location of separation, re-enlistment, moral waiver and specialty, and DD Form 214, Certificate of Discharge of Release from Active Duty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–280, Army Retention Program; Army Regulation 635–200, Enlisted Personnel; and E.O. 9397 (SSN).

PURPOSE(S):

To monitor separations of active duty and reserve personnel as a means of controlling strength and record accountability, and re-enlistment processing, and to ensure separation documents are filed in official military record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/discs and electronic storage media.

RETRIEVABILITY:

By name and/or Social Security Number.

SAFEGUARDS:

Records are protected by physical security devices, guards, computer software and hardware safeguard features, and personnel clearances.

RETENTION AND DISPOSAL:

Separation records and related documents are maintained for six months and then destroyed.

Reenlistment eligibility records are forwarded for incorporation into the military personnel jacket, destroy upon reenlistment of individual.

Military Personnel Transition Point Processing Master File records are retained in current file area, treat as permanent until National Archives and Records Administration disposition is approved.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, Social Security Number, military status, and if separated, date of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, Social Security Number, military status, and if separated, date of separation.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From relevant Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–40 TAPC

SYSTEM NAME:

Temporary Disability Retirement Master List (TDRL) (January 8, 2001, 66 FR 1321).

Change

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0635–40 AHRC'.

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A0635–40 AHRC

SYSTEM NAME:

Temporary Disability Retirement Master List (TDRL).

SYSTEM LOCATION:

Primary location: Chief, U.S. Army Physical Disability Agency, Walter Reed Army Medical Center, 6900 Georgia Avenue, NW., Building 7, Washington, DC 20307–5001.

Secondary location: Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46249–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel who are on temporary disability retirement.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains, Social Security Number, name, address, Department of Army special order number, percentage of disability, doctor code, re-examination date, date placed on TDRL, hospital code, travel code, Army component, pay termination code, requirement for board code, record control number, hospital name and address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1376, Temporary Disability Retired Lists; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 635–40, Physical Evaluation for Retention, Retirement of Separation; and E.O. 9397 (SSN).

PURPOSE(S):

To coordinate with medical treatment facilities for scheduling medical examinations; to issue travel orders for individual to report to medical treatment facility for annual medical examination; to determine individual's status by the end of the fifth year of being on the TDRL, *i.e.*, whether individual is to be permanently retired for disability, or returned to duty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs to facilitate claims for veteran disability benefits.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in medical treatment facilities; magnetic tape, disc.

RETRIEVABILITY:

By name, Social Security Number and date.

SAFEGUARDS:

Access to all records is restricted to individuals having need therefore in the performance of duties. Automated media are further protected by authorized password for system, controlled access to operation rooms and controlled output distribution. Records are retained in secure offices within secure buildings.

RETENTION AND DISPOSAL:

Information is maintained for 3 years after the member is found physically fit, separates or retires.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, U.S. Army Physical Disability Agency, Walter Reed Army Medical Center, 6900 Georgia Avenue, NW., Building 7, Washington, DC 20307–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Chief, U.S. Army Physical Disability Agency, Walter Reed Army Medical Center, 6900 Georgia Avenue, NW., Building 7, Washington, DC 20307–5001.

Individual should provide the full name, Social Security Number, current address and telephone number, and signature.

Inquiries are restricted to issues relating to the Temporary Disability Retirement List only; issues of pay must be made at the Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46249–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief, U.S. Army Physical Disability Agency, Walter Reed Army Medical Center, 6900 Georgia Avenue, NW., Building 7, Washington, DC 20307–5001.

Individual should provide the full name, Social Security Number, current address and telephone number, and signature.

Inquiries are restricted to issues relating to the Temporary Disability Retirement List only; issues of pay must be made at the Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46249–5000.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, medical treatment facilities, and other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings (May 20, 2003, 68 FR 27539).

Change

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0635–200 AHRC'.

* * * * *

A0635–200 AHRC

SYSTEM NAME:

Separations: Administrative Board Proceedings.

SYSTEM LOCATION:

U.S. Army Human Resources Command, ATTN: AHRC–PDT–P, 200 Stovall Street Alexandria, VA 22332–0478. Segments exist at Major Army Commands and subordinate commands, field operating agencies, and activities exercising general courts-martial jurisdiction. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members on whom allegations of defective enlistment/agreement/fraudulent entry/alcohol or other drug abuse rehabilitation failure/unsatisfactory performance/misconduct/homosexuality under the provisions of Chapters 7, 9, 13, 14, or 15 of Army Regulation 635–200, Enlisted Personnel, result in administrative board proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to service member of allegations on which proposed separation from the Army is based; supporting documentation; DA Form 2627, Records of Proceedings under Article 15, UCMJ; DD Form 493, Extract of Military Records of Previous Convictions; medical evaluations; military occupational specialty evaluation and aptitude scores; member's statements, testimony, witness statements, affidavits, rights waiver record; hearing transcript; board findings and recommendations for separation or retention; final action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1169, Regular enlisted members; limitations on discharge, 10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*; DoD Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used by processing activities and the approval authority to determine if the member meets the requirements for retention or separation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are accessed only by designated persons having official need; in locked cabinets, in locked rooms within secure buildings.

RETENTION AND DISPOSAL:

The original of board proceedings becomes a permanent part of the member's Official Military Personnel Record. When separation is ordered, a copy is sent to member's commander where it is retained for two years before being destroyed. When separation is not ordered, board proceedings are filed at the headquarters of the separation authority for two years, then destroyed. A copy of board proceedings in cases where the final authority is the U.S. Army Human Resources Command, pursuant to Army Regulation 635–200, is retained by that headquarters (AHRC–PDT) for one year following decision.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, ATTN: AHRC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the installation where administrative board convened or to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

RECORD ACCESS PROCEDURES:

If individual has been separated from the Army, address written inquiries to the National Personnel Records Center, General Services Administration, 9700 Page Avenue, St Louis, MO 63132–5200: proceedings will be part of the Official Military Personnel Record.

If member is on active duty, address written inquiries to the commander of the installation where administrative board convened.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; individual's commander; Army personnel, medical, and/or investigative records; witnesses; the Administrative Separation Board; federal, state, local, and/or foreign law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0680–31a TAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS) (June 29, 1999, 64 FR 34791).

Change

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0680–31a AHRC'.

* * * * *

A0680–31a AHRC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS).

SYSTEM LOCATION:

Commander, U.S. Army Human Resources Command, ATTN: AHRC–OPD–S, Information Management Officer, 200 Stovall Street, Alexandria, VA 22332–0414.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals projected for entrance into the Active officer corps, active duty commissioned and warrant officers, officers in a separated or retired status, activated/mobilized U.S. Army Reserve and National Guard officers, and DoD civilians and military officers who serve as rating officials on the Officer Evaluation Reports (OERs) of Army officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Total Army Personnel Data Base—Active Officer (TAPDB–AO) is the active officer component database of Total Army Personnel Data Base. It is comprised of approximately 100 data tables containing the official automated personnel records for active component Army officers. Data maintained in the Total Army Personnel Data Base—Active Officer includes Social Security Number, name, grade, personal and family information, service, security clearance, assignment history, strength management data, civilian and military education, awards, training, branch and occupational specialties/areas of concentration, mailing addresses, telephone numbers, facsimile numbers, email addresses, physical location, languages, career pattern, performance, command and promotion history, retirement/separation information and service agreement information. TAPDB–AO is updated in both on-line and batch

mode from various source data bases and applications including the Standard Installation Division Personnel System (SIDPERS), the Total Officer Personnel Management Information System (TOPMIS), the Officer Evaluation Reporting System (OERS) and Accessions Management Information Systems (AMIS).

Accessions Management Information Systems (AMIS) contains selected officer personnel data from the Total Army Personnel Data Base—Active Officer, the date of entry on active duty, selected information regarding current location/school for pre-accessed officers, demographic data and assignment information on new officer accessions. It includes individual and mass record processing, erroneous record processing, report generation, Regular Army integration processing, Accessions Management Information Systems (AMIS) active record data, Officer Record Brief (ORB) information and strength data. Accessions Management Information Systems (AMIS) is used to manage Reserve Officer Training Corps (ROTC), U.S. Military Academy (USMA), Officer Candidate School (OCS), Judge Advocate General Corps (JAG) Recalls, Chaplains Corps, Warrant Officer and Surgeon General Reserve officer's accessions. Accessions Management Information Systems (AMIS) data is stored on the Total Army Personnel Data Base—Active Officer. Some users enter new accession data directly to the Total Army Personnel Data Base—Active Officer via Accessions Management Information Systems (AMIS). For Reserve Officer Training Corps (ROTC), and U.S. Military Academy (USMA) new accessions, data extracts are batch loaded to the Total Army Personnel Data Base—Active Officer annually.

Assignments and Training Selection for Reserve Officer Training Corps (ROTC) graduates contains selected information from the Total Army Personnel Data Base—Active Officer (TAPDB–AO), the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty or delay selection, Regular Army selection and branch selection.

The Officer Evaluation Reporting System (OERS) contains selected information from the Total Army Personnel Data Base—Active Officer (TAPDB–AO); selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OERs; selected information for each OER; and the name, Social Security Number, and rating history of each individual, military and civilian, who has served as the senior rating official for an active duty Army officer.

Total Officer Personnel Management Information System (TOPMIS) provides the display and update of selected data on Total Army Personnel Data Base—Active Officer (TAPDB–AO) and comprises an extensive variety of automated officer personnel management functions. These functions include, officer personnel record display and update, requisition validation and processing, active officer strength management, Officer Distribution Plan (ODP) goaling management, officer asset reports, centralized command slate development, assignment stabilization break processing, electronic mail, Officer Record Brief (ORB) display and interactive telephonic/voice response retrieval of selected information from Total Army Personnel Data Base—Active Officer (TAPDB–AO).

Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the Total Army Personnel Data Base—Active Officer (TAPDB–AO) and the following information pertaining to ROTC instructors; ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned. This information is maintained in a local database by the Cadet Command Distribution Account Manager in Officer Distribution Division, OPMD, AHRC–OPD–O.

Advanced Civil Schools Management Information System (ACSMIS) contains selected information from the Total Army Personnel Data Base—Active Officer and the following information concerning commissioned and warrant officer personnel currently participating, or who have previously participated, in one of the following: Army sponsored college degree completion program, Training With Industry (TWI) program, special fellowship/scholarship programs, or the fully funded degree program. Data maintained also includes schooling start/stop dates, degree level, educational discipline and Army duty positions.

Army Education Requirements System (AERS) contains selected information from the Total Army Personnel Data Base—Active Officer (TAPDB–AO) for officer and warrant officer personnel who are serving or are projected to serve in an AERS approved position requiring graduate level education.

U.S. Army Military Academy (USMA) Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the USMA teaching staff; academic department and projected availability for USMA instructor duty. This information is maintained in a local database by the USMA Distribution Account Manager in Officer Distribution Division, OPMD, AHRC–OPD–O.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used for personnel management strength accounting, manpower management, accessioning and determining basic entry specialty (branch) and initial duty assignments; tracking Officer Evaluation Reports, the rating history of senior rating official's rating history on individual OERs producing reports on active duty officers who have served as senior rating officials; managing instructor population at ROTC detachments and USMA; tracking information relating to the Army Degree Completion Civil School Program; transmitting necessary assignment instructions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Social Security Administration to verify Social Security Numbers.

To the Smithsonian Institution (The National Museum of American History): Copy of the U.S. Army Active Duty Register, for historical research purposes (not authorized for public display).

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronically on computer magnetic tapes and disc.

RETRIEVABILITY:

By Social Security Number, name, or other individual identifying characteristics.

SAFEGUARDS:

Physical security devices, guards, computer hardware and software

features, and personnel clearances. Automated media and information are protected by authorized user ids, passwords for the system, a tiered system of security for access to officer data provided via Interactive Voice Response Systems based on the sensitivity of the data items provided, encryption of data transmitted via networks, controlled access to operator rooms and controlled output distribution.

RETENTION AND DISPOSAL:

Records are retained on the active TAPDB–AO files for 4 months after separation. Historical TAPDB–AO records are retained dating back to FY 1970. Accessions in AMIS are retained on active file until effective date of accession and are then placed on a history file for a period of 6 months. Records in the ROTC Graduate Assignment and Training Selection File are retained for approximately 400 days after the file is created (Approximately December each year). Historic files for the OER system are kept for the life of the system. All other records are retained for active duty only until the individual is released from active duty and then destroyed. There are still hard copies in their Official Military Personnel Files (OMPFs).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, ATTN: AHRC–OPD–S, Information Management Officer, 200 Stovall Street, Alexandria, VA 22332–0414.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–OPD–S, Information Management Officer, 200 Stovall Street, Alexandria, VA 22332–0414.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–OPD–S, Information Management Officer, 200 Stovall Street, Alexandria, VA 22332–0414.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

Selected data from the Total Army Personnel Data Base—Active Officer is also accessible to records subjects through an Interactive Voice Response Systems (IVRS). Access to the data made available through the IVRS is controlled by a tiered security system, which is based on the sensitivity of the data being accessed.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, civilian Educational Institutions, Army records and reports, other Federal, state, and local agencies and departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–5 TAPC

SYSTEM NAME:

Separation Transaction Control/Records Transfer System (January 8, 2001, 66 FR 1314).

SYSTEM LOCATION:

Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478;

U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301;

U.S. Army Reserve Components and Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty enlisted and reserve personnel separated from military service (excluding active duty for military for training) and all personnel immediately re-enlisting after separation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, rank, eligibility for re-enlistment, character of separation, program designator, date and location of separation, reenlistment, moral waiver and specialty, and DD Form 214, Certificate of Discharge of Release from Active Duty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–280, Army Retention Program; Army Regulation 635–200, Enlisted Personnel; and E.O. 9397 (SSN).

PURPOSE(S):

To monitor separations of active duty and reserve personnel as a means of controlling strength and record accountability, and re-enlistment processing, and to ensure separation documents are filed in official military record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/discs and electronic storage media.

RETRIEVABILITY:

By name and/or Social Security Number.

SAFEGUARDS:

Records are protected by physical security devices, guards, computer software and hardware safeguard features, and personnel clearances.

RETENTION AND DISPOSAL:

Separation records and related documents are maintained for six months and then destroyed.

Reenlistment eligibility records are forwarded for incorporation into the military personnel jacket, destroy upon reenlistment of individual.

Military Personnel Transition Point Processing Master File records are retained in current file area, treat as permanent until National Archives and Records Administration disposition is approved.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, Social Security Number, military status, and if separated, date of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, Social Security Number, military status, and if separated, date of separation.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From relevant Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–18875 Filed 8–17–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Friday, September 24, 2004, from 9 a.m. to 11:15 a.m. The closed Executive Session will be held from 11:15 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Lyndon B. Johnson Room of the U.S. Capitol in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: August 9, 2004.

J.H. Wagshul,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–18920 Filed 8–17–04; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, September 1, 2004. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Delaware River Basin Commission's offices at 25 State Police Drive in West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 9:30 a.m. Topics of discussion will include: an update on the Water Resources Plan for the Delaware River Basin ("Basin Plan") and the Watershed Summit scheduled for September 13–15; a proposal to amend the Water Quality Regulations, Water Code and Comprehensive Plan to designate the Lower Delaware River as Special Protection Waters; options available to provide interim water quality protection for the Lower Delaware pending the effective date of the proposed designation; a proposed rule to establish waste minimization plan requirements for point and non-point source discharges following issuance of a TMDL or assimilative capacity determination; a proposal to amend Resolution No. 2002–33 relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions, in order to restore a distinction between drought operation of Lake Wallenpaupack and drought operation of the Mongaup Reservoir System and to insert a reference to flow and temperature targets in the upper Delaware River and in the West Branch Delaware, East Branch Delaware, and Neversink Rivers; recommendations of the Toxics Advisory Committee concerning the collection of additional point source data in accordance with Resolution No. 2003–27 for purposes of developing the Stage 2 TMDLs for PCBs in the Delaware Estuary; and a report on the PCB TMDL Implementation Advisory Committee meeting of August 11, 2004.

The subjects of the public hearing to be held during the 2:30 p.m. business meeting include the dockets listed below:

1. *Exelon Generation Company, LLC D–69–210 CP Final (Revision 12).* An application for temporary approval to modify the Operating Plan of the Limerick Generating Station (LGS), a nuclear-powered electric generating station located in Limerick Township, Montgomery County, Pennsylvania, regarding surface water withdrawal restrictions related to ambient water temperature in the Schuylkill River. The applicant proposes to demonstrate, under controlled conditions, that the withdrawal of Schuylkill River water can continue without adverse impact when the background water temperature exceeds 59° F, the maximum temperature at which withdrawals can be made under the current docket. In July 2004, an amended application and draft operating and monitoring plan was submitted after discussion with the Commission staff, the State of Pennsylvania and stakeholders. The amended application provides:

- A multi-year demonstration period during the remainder of the 2004 season through the 2007 season associated with flow and temperature restrictions in accordance with an approved operating and monitoring plan;
- Withdrawals of approximately one half (not to exceed 60 percent, 24 million gallons per day (mgd)) of LGS's consumptive water needs during times when the Schuylkill River 24-hour average river ambient water temperature exceeds 59° F and when river flow is at or below 1,791 cubic feet per second (cfs) (but above 560 cfs) at the gaging station at Pottstown;
- Withdrawals of all of LGS's consumptive water needs during times when the Schuylkill River 24-hour average river ambient water temperature exceeds 59° F and when river flow exceeds 1,791 cfs.;
- Maintenance of minimum flows below 27 cfs but at least 10 cfs in the East Branch Perkiomen Creek during the effective period of the demonstration;
- Development of flow management procedures to increase flows in the East Branch Perkiomen Creek above 10 cfs to support specific short-term recreational events;
- Allowing consumptive use augmentation credit for augmented Perkiomen Creek flow;
- Establish a restoration and monitoring fund based on $0.06/1000 gallons of augmentation water that is not required due to lifting the 59° F temperature requirement;
- The establishment of a list of restoration projects, and performing restoration projects during 2005 and future years;
- Developing an adaptive management plan for restoration projects;
- Working with stakeholders regarding the design and implementation of the demonstration and restoration projects;
- Test periods of times with no augmentation (beyond minimum flows in the East Branch Perkiomen Creek);
- The continuation of the Wadesville Mine Pool withdrawal and Stream Flow Augmentation Demonstration Project that was approved under Docket D–69–210 CP (Final) (Revision 11) and extended for two years by Commission Resolution No. 2003–25 adopted December 3, 2003.

2. *Cabot Supermetals D–70–72 (REVISION).* An application to upgrade an industrial wastewater treatment plant (IWTP) and implement manufacturing operation improvements necessary to meet water quality objectives in Swamp Creek, a tributary of Perkiomen Creek in the Schuylkill River Watershed. The applicant produces primary nonferrous metals and alloys plus inorganic chemicals at its Boyertown Facility, which is located on the east side of Wilson Avenue and straddles the borders of Douglass Township, Montgomery County and Colebrookdale Township, Berks County, both in Pennsylvania. No expansion of the 0.222 million gallon per day (mgd) IWTP is proposed. The plant effluent, along with storm water, cooling water and water supply treatment wastewater, will continue to be discharged to Swamp Creek via the existing outfall.

3. *UTI Corporation—D–93–61 (G)–2.* An application for the renewal of a ground water withdrawal project to supply up to 3.16 million gallons per 30 days (mg/30 days) of water to the applicant's ground water remediation system from existing Wells Nos. UTM–1 and UTM–11 in the Brunswick Formation. This renewal project represents a decrease in allocation from 6.5 mg/30 days to 3.16 mg/30 days. The project is located in the Perkiomen Creek Watershed in the Borough of Trappe in Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Oley Township Municipal Authority D–2001–36 CP.* An application for approval of a ground water withdrawal project to supply up to 2.16 million gallons per 30 days (mg/30 days) within the first year of operation from proposed Well No. 4 in the Granitic Gneiss Formation, to the applicant's public water supply system. In subsequent years, and based on the results of a monitoring program, the allocation from Well No. 4 may be incrementally increased up to 6.48 mg/30 days. The withdrawal from all wells will be limited to 12.94 mg/30 days. The project is located in the Little Manatawny Creek Watershed in Oley Township, Berks County, Pennsylvania.

5. *Penn Estates Utilities, Inc. D–2003–36 CP.* An application for approval of a ground water withdrawal project to supply up to 3.9 million gallons per 30 days (mg/30 days) of water to the applicant's Penn Estates development from new Well No. 7 in the Catskill Formation, and to increase the existing withdrawal from all wells to 10.80 mg/30 days. The project is located in the Brodhead Creek Watershed in Stroud Township, Monroe County, Pennsylvania.

6. *Milford Township Water Authority D–2003–37 CP.* An application for approval of a ground water withdrawal project to supply up to 6.48 million gallons per 30 days (mg/30 days) of water to the applicant's distribution system from new Well No. 5 in the Brunswick Formation, and to increase the existing withdrawal from all wells to 15.52 mg/30 days. The project is located in the Unami-Licking Creeks Watershed in Milford Township, Bucks County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Bedminster Municipal Authority D–2004–2 CP.* An application for approval of a ground water withdrawal project to supply up to 7.136 million gallons per 30 days (mg/30 days) of water to the applicant's public water distribution system from new Wells A and E in the Brunswick Formation, and in conjunction with existing Wells Nos. 2 and 9, to increase the existing withdrawal from all wells to 10.705 mg/30 days. The project wells are located in the Deep Run Watershed in Bedminster Township, Bucks County, Pennsylvania in the Southeastern Pennsylvania Ground Water Protected Area.

8. *Telford Borough Authority D–2004–10 CP.* An application for approval of a ground water withdrawal project to supply up to 2.19 million gallons per 30 days (mg/30 days) of water to the applicant's public water distribution system from new Well No. 7 in the Brunswick Formation, and to retain the existing withdrawal from all wells to 38.6 mg/30 days. The project wells are located in the East Branch Perkiomen Creek Watershed in Telford Borough, Bucks and Montgomery Counties and West Rockhill and Hilltown Townships, Bucks County, all located in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Greenbriar Founders, LLC D–2004–26–1.* An application for approval of a ground water withdrawal project to supply up to 16.5 million gallons per 30 days (mg/30 days) of water for supplemental irrigation of the applicant's proposed Ledgerock Golf Course from new Well IW–1 and up to 1.77 mg/30 days from new Well IW–2, both in the Hammer Creek Formation, and to initially limit the existing withdrawal from all wells to 16.5 mg/30 days. The initial combined allocation of 16.5 mg/30 days is provided to allow for establishment of the golf course turf grasses. Once the turf grasses are established, the combined allocation will be reduced to 8.25 mg/30 days. The project is located in the Angelica Creek Watershed in Cumru Township, Berks County, Pennsylvania.

10. *New York City Department of Environmental Protection D–2004–28 CP–1.* An application to modify a sewage treatment plant (STP) located at 4 Neversink Drive in the City of Port Jervis, Orange County, New York. The STP has a capacity of 5 million gallons

per day and serves the City of Port Jervis. The existing plant provides secondary treatment, and discharges to the Neversink River, upstream from DRBC Special Protection Waters and the Delaware Water Gap National Recreation Area. The proposed modification, which constitutes Phase I of a multi-phase improvement project, involves the demolition of three Imhoff tanks and construction of two sedimentation basins, plus minor facility upgrades. No increase in STP capacity is proposed.

In addition to the public hearing on the dockets listed above, the Commission's *2:30 p.m. business meeting* will include a public hearing and possible action on a resolution to amend Resolution No. 2002–33 relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions, in order to restore a distinction between drought operation of Lake Wallenpaupack and drought operation of the Mongaup system reservoirs and to insert a reference to flow and temperature targets in the upper Delaware River and the West Branch Delaware, East Branch Delaware, and Neversink Rivers. The business meeting may include resolutions for the minutes to initiate notice and comment rulemakings amending the Water Quality Regulations, Water Code, and Comprehensive Plan to: (1) Designate the Lower Delaware River as Special Protection Waters; and (2) establish waste minimization plan requirements for point and non-point source discharges following issuance of a TMDL or assimilative capacity determination. In addition, the meeting will include: adoption of the Minutes of the July 13, 2004 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; and an opportunity for public dialogue.

Draft dockets and the resolution scheduled for public hearing on September 1, 2004 will be posted on the Commission's web site, *http://www.drbc.net*, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at (609) 883–9500 ext. 221 with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission secretary directly at (609) 883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: August 12, 2004.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 04–18887 Filed 8–17–04; 8:45 am]

BILLING CODE 6360–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0028, FRL–7802–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Assessment of EPA Compliance Assistance Projects, EPA 1860.03, OMB Control Number 2020–0015

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 28, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 18, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0028, to EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, MC 2201A, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Hans Scheifele, Compliance Assistance and Sector Programs Division, 2224A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1459; fax number: (202) 564–0009; email address: *scheifele.hans@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OECA–2004–0028, which is available for public viewing at the "Information Collection Request Renewal: Assessment of EPA Compliance Assistance Projects, EPA 1860.03, OMB Control Number 2020–0015" Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Compliance Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected Entities: Entities potentially affected by this action are Business or other for profit, Federal Government, or State, Local, and Tribal Government.

Title: Assessment of EPA Compliance Assistance Projects.

Abstract: This information collection determines how well EPA compliance assistance tools and services meet customers needs and to assess the effectiveness of the assistance activities.

This will be a voluntary collection of information to gauge customer satisfaction with the compliance assistance projects, measure any resulting changes in knowledge and/or behavior, and evaluate any environmental and human health impacts. EPA proposes to use assessment surveys to provide the agency with feedback on the compliance assistance documents, onsite visits, telephone assistance, Web sites, and compliance assistance seminars and workshops delivered by headquarters and regional compliance assistance programs to the regulated community. This feedback will help EPA improve the quality and delivery of compliance assistance tools and services. This ICR will only provide anecdotal data for the purpose of informing EPA of the effectiveness of compliance assistance tools, and customer satisfaction with those tools. All assessments undertaken under this ICR will adhere to specific conditions to ensure that data is collected and used properly and efficiently. The information collection is voluntary, and will be limited to non-sensitive data concerning the quality of compliance assistance activities. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 9 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search dafa sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 30, 2004.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 04–18961 Filed 8–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0013, FRL–7802–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; EPA Strategic Plan Information on Source Water Assessment and Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. The ICR is scheduled to expire on October 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 18, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0013, to EPA online using EDOCKET (our preferred method), by e-mail to *OW–Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, MC 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kevin Barnes, Office of Ground Water and Drinking Water, Drinking Water Protection Division, MC 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3893; fax number: (202) 564–3756; e-mail address: *barnes.kevin@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2004–0013, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are the 52 States and territories.

Title: EPA Strategic Plan Information on Source Water Assessment and Protection.

Abstract: Section 1453(a)(3) of the Safe Drinking Water Act requires States to submit to EPA a Source Water Assessment Program within 18 months after issuance of the national guidance on State Source Water Assessment and Protection Programs, which was issued by EPA on August 5, 1997. Upon EPA approval of the programs, States conducted source water assessments of their public water systems. The Assessment Program will be completed by States relative to the SDWA because State assessments were required under section 1453. (The burden and cost associated with any remaining assessment work has already been calculated under previous ICRs).

The EPA Strategic Plan (2003–2008) includes source water assessment and protection program measures to analyze the aggregated results of the assessments and describe the voluntary source water protection actions taken at the local or regional level, based on the assessment results. This information is collected from States to understand, in aggregate, the results of State assessments and the protection actions in each State based on those assessments, and to measure progress toward the Agency's strategic goal that, by 2008, 50% of source water areas for community water systems will achieve minimized risk to public health. ("Minimized risk" is achieved by substantial implementation, as determined by the State, of source water protection actions in a source water protection strategy.) The information is collected through EPA's Strategic Planning process. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

EPA is collecting, on a voluntary basis, data from the States related to the status of assessment completion, the most prevalent and most threatening sources of contamination, overall risk to source waters, and progress toward substantial implementation of prevention strategies for all community water system source water areas. This data is generated under the authority of section 1453(a)(3) of the Safe Drinking Water Act. While implementing source water protection programs is not required under the Act, Drinking Water State Revolving Fund monies under section 1452 of the Safe Drinking Water Act may be used, and is being used, for set-aside activities to support these efforts.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 81 hours per State response.

Estimated Number of Likely Respondents: 52.

Frequency of Response: Once per year.

Estimated Total Annual Hour Burden: 4,212 hours.

Estimated Total Annualized Cost Burden: $1,122,385.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 12, 2004.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–18962 Filed 8–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7803–2]

National Drinking Water Advisory Council's Water Security Working Group Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is hereby announcing a meeting of the Water Security Working Group (WSWG) of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act. The purpose of this meeting is to provide an opportunity for the WSWG members to finalize the working group ground rules, operating procedures, and project plan; to discuss coordination with other on-going efforts; and to begin deliberation on an approach to complete the WSWG charge. The WSWG members are meeting to analyze relevant issues and facts pursuant to the charge to develop recommendations for best security practices and policies for drinking water and wastewater facilities for NDWAC's consideration.

DATES: The first WSWG public meeting will take place on August 31, 2004, from 1:30 p.m. to 4 p.m., Pacific Standard Time (PST) and September 2, 2004, from 8 a.m. to 11 a.m., PST. The meeting on September 1, 2004, from 8 a.m. to 5 p.m., PST, will be closed to the public.

ADDRESSES: The meeting will take place at the Hotel Monaco Seattle, which is located at 1101 4th Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Marc Santora, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please contact Marc Santora at *santora.marc@epa.gov* or call (202) 564–1597 to receive additional details.

SUPPLEMENTARY INFORMATION: The August 31 and September 2, 2004, meeting is open to the public. Statements from the public will be taken if time permits on both days. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization.

The September 1, 2004, meeting will be closed to the public, as the

discussion will involve the disclosure of sensitive information relating to specific water sector vulnerabilities. Since the WSWG, as a working group to the NDWAC, is not a Federal advisory committee, it is not subject to the same public disclosure laws that govern NDWAC, which is a Federal advisory committee. Until the working group agrees on the protocol to be used to close any portion of future meetings, one day of this meeting (September 1, 2004) will only be open to WSWG members, Federal resource personnel, facilitation support contractors, and outside experts identified by the facilitation support contractors.

Any person needing special accommodations at this meeting, including wheelchair access, should contact Marc Santora, Designated Federal Officer, at the number or e-mail under the **FOR FURTHER INFORMATION CONTACT** section, at least five business days in advance.

Background

The WSWG charge is to: (1) Identify, compile, and characterize best security practices and policies for drinking water and wastewater utilities and provide an approach for considering and adopting these practices and policies at a utility level; (2) consider mechanisms to provide recognition and incentives that facilitate a broad and receptive response among the water sector to implement these best security practices and policies and make recommendations as appropriate; (3) consider mechanisms to measure the extent of implementation of these best security practices and policies, identify the impediments to their implementation, and make recommendations as appropriate.

Dated: August 13, 2004.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–19006 Filed 8–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7802–4]

Science Advisory Board Staff Office; Notification of Upcoming Science Advisory Board Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the chartered SAB. The Board will discuss science issues facing EPA Regions; review and approve of two SAB Committee draft reports; discuss and approve the FY 2005 SAB plans; and plan for the SAB annual meeting. The SAB Staff Office also announces a public meeting of the SAB's Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) to focus on regional science issues related to the Committee's charge.

DATES:

September 13–14, 2004. A public meeting of the Board will be held from 9 a.m. to 5:30 p.m (Pacific Time) on September 13, 2004, and from 8:30 a.m. to 4 p.m. (Pacific Time) on September 14, 2004.

September 13–15, 2004. A public meeting of the C–VPESS will be held from 1 p.m. to 3:45 p.m (Pacific Time) on September 13, 2004; from 8 a.m. to 6 p.m. (Pacific Time) on September 14, 2004; and from 8 a.m. to 11:30 a.m. (Pacific Time) on September 15, 2004.

ADDRESSES: The meetings of the Board and the C–VPESS will be held at the U.S. EPA Region 9 Headquarters Office, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding the Board may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board via phone (202–343–9982) or e-mail at *miller.tom@epa.gov*, or Dr. Anthony Maciorowski, Associate Director for Science, U.S. EPA Science Advisory Board via phone (202–343–9983) or e-mail at *maciorowski.anthony@epa.gov*.

Members of the public wishing further information regarding the C–VPESS meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202–343–9981) or e-mail at: *nugent.angela@epa.gov*.

The SAB Mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meetings announced in this notice, may be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background on the Board Meeting: At this meeting, the Science Advisory Board will focus on the following: (a) Science programs of EPA Region 9, (b) the FY 2005 SAB plan, (c) the review of two draft SAB Panel reports, and (d) planning for the SAB Annual meeting scheduled for December 1–2, 2004. Any additional items that might be discussed will be reflected in the meeting agenda that will be posted on the SAB website prior to the meeting.

(a) *EPA Regional Science Issues*—The SAB will receive briefings from, and discuss scientific issues, with Regional senior leadership and scientists. These are designed to (1) inform the SAB about regional science issues and concerns; (2) identify opportunities for future SAB and Regional office interactions on topics of interest; and (3) provide the regions with insights into the overall SAB role in advising the Agency on the technical underpinnings of the Agency's science and environmental decisions.

(b) *SAB FY 2005 Plan*—The Board will finalize its operational plans for FY 2005. This will include discussions of projects nominated by Agency offices and regions, projects nominated by SAB and its Committees, and its continuing information gathering activities in support of the SAB review of EPA's science budget.

(c) *Review of SAB Committee Draft Reports:* The Board will review two draft SAB reports. Reports to be considered include: (1) The SAB's draft report Review of EPA's Draft Report on the Environment 2003, and (2) SAB's draft report Report of the U.S. EPA Science Advisory Board's 3MRA Panel on the Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) Modeling System. Information on these reviews, and drafts of each report, can be found on the SAB Web site at: *http://www.epa.gov/sab/drrep.htm*.

(d) *Planning for the SAB Annual Meeting:* The Board will discuss its plans for its Annual Meeting of the SAB which is scheduled to be held in Washington, DC on December 1–2, 2004.

Background on the C–VPESS Meeting: Background on the Committee and its charge was provided in 68 FR 11082 (March 7, 2003). The purpose of the meeting is for the Committee to focus on regional science needs, work-products, and activities by holding panel discussions, briefings, and break-out groups. The SAB will receive briefings on issues related to the value of protecting ecological systems and services in Region 9 and discuss scientific issues, with Regional senior leadership and scientists.

All of these activities are related to the Committee's overall charge, to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services, and then to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Review Material for the Meetings: Agendas and documents that are the subject of these meetings are available from the SAB Staff Office Web site *http://www.epa.gov/sab/*.

Procedures for Providing Public Comment: It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at Board meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) in writing via e-mail at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact the relevant DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 10, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–18960 Filed 8–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0054; FRL–7349–8]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by February 14, 2005 or September 17, 2004 for EPA Registration Number(s): 000264–00706, 000264–00707, 000264–00708, 000264–00709, 000264–00710, 000264–00711, 000264–00712, 000264–00713, 000264–714, 000264–00715, 000499–00369, 002517–00043, 002517–00044, 002517–00045, 002517–00046, 005625–00001, 007969–00116, 007969–00127, 008660–00045, 008660–00049, 008660–00055, 008660–00057,034704–00788, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than February 14, 2005 on all the other EPA Registration Numbers.

FOR FURTHER INFORMATION CONTACT: James A. Hollins, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: hollins.james@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0054. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel some 260 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000056–00041	Eaton's Bait Blocks Rodenticide with Apple Flavorizer	Diphenylacetyl)-1,3-indandione
000056–00044	Eaton's All Weather Bait Blocks Rodenticide with Fish F	Diphenylacetyl)-1,3-indandione
000070–00124	Kill-Ko Malathion Concentrate	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000100–01005	Demon 3E\Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-, cyano(3-phenoxyphenyl)me
000100–01007	Demon 3 TC Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-, cyano(3-phenoxyphenyl)me
000100–01011	Commodore EC Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01044	Commodore WP Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01045	Scimitar WP Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01058	Commodore WP Insecticide In Water-Soluble Packets	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01076	Scimitar WP Greenhouse Insecticide In Water Soluble Pac	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01077	Scimitar WP Greenhouse Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01081	Scimitar CS Greenhouse Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01085	Commodore Insecticide In Ready Mix Water Soluble Packet	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01089	Scimitar WP Golf Course Turf Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01090	Scimitar WP Turf and Ornamental Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01096	Lambda-Cyhalothrin CS Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100–01100	Scimitar G Insecticide In Water Soluble Packets	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100 AL–99–0004	Warrior T Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100 AZ–95–0001	Eptam (R) 20. G Granules	Ethyl dipropylthiocarbamate
000100 CO–03–0001	Warrior Insecticide with Zeon Technology	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100 MN–90–0004	Gramoxone Extra Herbicide	Dimethyl-4,4'-bipyridinium dichloride
000100 MN–95–0005	Fusilade DX Herbicide	Butyl (R)-2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate
000100 MN–99–0015	Warrior T Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100 MT–01–0003	Tough 5 EC	Chloro-3-phenyl-4-pyridazinyl) S-octyl carbonothioate

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000100 MT–95–0006	Warrior Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100 MT–99–0009	Tough 5 EC	Chloro-3-phenyl-4-pyridazinyl) S-octyl carbonothioate
000100 ND–99–0010	Warrior T Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000100 OR–02–0014	Abound Flowable Fungicide	Azoxystrobin(BSI, ISO)
000100 OR–79–0077	Aatrex Nine - O Herbicide	Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine
000100 TX–83–0016	D.Z.N. Diazinon AG 500	Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000100 TX–90–0009	Gramoxone Extra Herbicide	Dimethyl-4,4'-bipyridinium dichloride
000100 TX–96–0005	Cyclone Herbicide	Dimethyl-4,4'-bipyridinium dichloride
000100 WA–79–0078	Aatrex Nine-O	Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine
000100 WA–80–0083	Aatrex 80W Herbicide	Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine
000100 WA–97–0002	Mefenoxam EC	Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester (CAS NAME)
000100 WA–97–0025	Eptam 7-E Selective Herbicide	Ethyl dipropylthiocarbamate
000100 WA–99–0024	Warrior T Insecticide	Cyano-3-phenoxybenzyl (1S+1R)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcycl
000192–00214	Riverdale 5% Granular Insecticide	Phosphorothioic acid, O,O'-(thiodi-4,1-phenylene) O,O,O',O'-tetramethyl ester
000192–00216	Riverdale Abate 4 EC	Phosphorothioic acid, O,O'-(thiodi-4,1-phenylene) O,O,O',O'-tetramethyl ester
000228–00099	Riverdale 10% Dacthal Granules	Dimethyl tetrachloroterephthalate
000228–00157	Riverdale Crabgrass Control and Fertilizer	Dimethyl tetrachloroterephthalate
000228–00161	Riverdale Grub Out Plus Fertilizer	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000228–00222	Riverdale 25% Dacthal Dust	Dimethyl tetrachloroterephthalate
000241 AZ–00–0003	Acrobat MZ Fungicide	Zinc ion andmanganese ethylenebisdithiocarbamate, coordination product Morpholine, 3-(3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl)-
000241 OR–00–0008	Prowl 3.3 EC Herbicide	Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine
000241 WA–02–0022	Acrobat 50WP Fungicide	Morpholine, 3-(3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl)-
000264–00706	2,4-DP Dichlorprop	Dichlorophenoxy)propionic acid
000264–00707	2,4-DP Technical	Dichlorophenoxy)propionic acid
000264–00708	Technical 2, 4-DP	Dichlorophenoxy)propionic acid
000264–00709	DP-4-Amine	Dimethylamine 2-(2,4-dichlorophenoxy)propionate

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000264–00710	2,4-DP Isooctyl Ester Technical	Isooctyl 2-(2,4-dichlorophenoxy)propionate
000264–00711	DP-4	Isooctyl 2-(2,4-dichlorophenoxy)propionate
000264–00712	MCPP Technical Acid	Methyl-4-chlorophenoxy)propionic acid
000264–00713	Technical MCPP Acid	Methyl-4-chlorophenoxy)propionic acid
000264–00714	MCPP-Tech	Methyl-4-chlorophenoxy)propionic acid
000264–00715	MCPP Technical	Methyl-4-chlorophenoxy)propionic acid
000279 CO–03–0002	Fury 1.5 EW Insecticide	Cyano(3-phenoxyphenyl)methyl (+/-)-cis/trans-3-(2,2-dichloethenyl)-2,2-dimethylcyclopropanec
000279 WA–78–0033	Thiodan 50WP Insecticide	Hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
000352 LA–03–0002	Dupont Krenite S Brush Control Agent	Ammonium ethyl carbamoylphosphonate
000400 OR–88–0013	Dimilin 25W for Cotton/Soybean	Chlorophenyl)-3-(2,6-difluorobenzoyl)urea
000400 WA–77–0012	Comite Agricultural Miticide	Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 WA–89–0020	Comite Agricultural Miticide	Butylphenoxy)cyclohexyl 2-propynyl sulfite
000464–00669	Bronopol Preservative	Bromo-2-nitropropane-1,3-diol
000499–00369	Whitmire PT 1300 Orthene Total Release Insecticide	Dimethyl acetylphosphoramidothioate
000524 WI–01–0010	Mon 78112 Herbicide	Isopropylamine glyphosate (N-(phosphonomethyl)glycine)
000769–00624	SMCP Malathion 50%	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000769–00673	SMCP 5% Malathion Dust	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000769–00676	SMCP Malathion 25-Wp	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000769–00677	SMCP Malathion 5% Pco Dust	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000769–00724	SMCP Abate 1% Granular(celatom)	Phosphorothioic acid, O,O'-(thiodi-4,1-phenylene) O,O,O',O'-tetramethyl ester
000769–00726	Golf Course Turf & Industrial Site Perimeter Granul	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000769–00752	PCE Malathion DDVP Residual Spray	Dimethyl phosphorodithioate of diethyl mercaptosuccinate Dichlorovinyl dimethyl phosphate
000769–00783	Superior Malathion E-45	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000769–00785	Omnikill Roack and Ant Bomb	Octyl bicycloheptene dicarboximide Dimethyl phosphorodithioate of diethyl mercaptosuccinate Pyrethrins
000769–00786	Superior S. K. Formula	Dimethyl phosphorodithioate of diethyl mercaptosuccinate Aliphatic petroleum hydrocarbons Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000769–00809	Superior EC 5 Malathion Concentrate	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000769–00903	Science Garden Insect Spray	Methoxychlor(2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) Dimethyl phosphorodithioate of diethyl mercaptosuccinate

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000829–00223	SA-50 Dursban .5G Granular Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000829–00232	SA-50 Brand Lawn Ormamental & Vegetable Fungicide	Tetrachloroisophthalonitrile
000829–00272	SA-50 Brand Dursban Mole Cricket Bait	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001022–00543	Chapcide 4-EC	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001386–00613	Dursban Lawn and Ornamental Insect Control	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001386–00615	Termite Kill II	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001386–00649	Dursban 4E	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001386–00652	Security Pro-Turf 1 Insect Control Granules	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001386–00653	Security Pro-Turf 2 Insect Control Granules	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001812–00446	Chlorpyrifos 6MUP	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001812 OR–01–0020	Direx 4l	Dichlorophenyl)-1,1-dimethylurea
001812 OR–01–0021	Direx 80DF	Dichlorophenyl)-1,1-dimethylurea
001812 OR–99–0005	Direx 80DF	Dichlorophenyl)-1,1-dimethylurea
002517–00043	Sergeant's Sentry IV Flea & Tick Collar	Dibromo-2,2-dichloroethyl dimethyl phosphate
002517–00044	Sergeant's Sentry IV Flea & Tick Collar	Dibromo-2,2-dichloroethyl dimethyl phosphate
002517–00045	Sergeant's (R) Sentry V Flea &Tick Collar for Dogs	Dibromo-2,2-dichloroethyl dimethyl phosphate Isopropoxyphenyl methylcarbamate
002517–00046	Sergeant's (R) Sentry V Flea &Tick Collar for Cats	Dibromo-2,2-dichloroethyl dimethyl phosphate Isopropoxyphenyl methylcarbamate
002724–00169	Vet-Kem Kemolate Emulsifiable Liquid	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
002724 OR–99–0046	Mavrik Aquaflow Insecticide	Chloro-4-trifluoromethyl)phenyl)-D-valine (+-)-cyano(3-phenoxyphenyl)methyl ester
002935–00426	Lorsban 30 Flowable	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
003125 OR–87–0001	Sencor 4 Flowable Herbicide	Triazin-5(4H)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 WA–99–0002	Admire 2 Flowable	Chloro-3-pyridinyl)methyl)-N-nitro-2-imidazolidinimine
004822–00482	Raid PID 1	Cyano-m-phenoxybenzyl (1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate
005481 FL–89–0003	Dibrom 14 Concentrate	Dibromo-2,2-dichloroethyl dimethyl phosphate
005481 MD–81–0023	Dibrom Concentrate	Dibromo-2,2-dichloroethyl dimethyl phosphate
005481 NY–94–0006	Dibrom Concentrate	Dibromo-2,2-dichloroethyl dimethyl phosphate
005481 NY–97–0005	Trumpet EC Insecticide	Dibromo-2,2-dichloroethyl dimethyl phosphate
005481 OR–00–0019	Win-Flo 4F	Pentachloronitrobenzene
005625–00001	Tempo Marine Outboard Outdrive Clear Anti-Fouling Paint	Tributyltin methacrylate

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
007501–00029	Gustafon Lorsban 50-SI	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
007501 WA–84–0070	Gustafson Pro-Gro Dust Seed Protectant	Tetramethyl thiuramdisulfide Dihydro-2-methyl-1,4-oxathiin-3-carboxanalide
007969–00116	MCPP Amine 4	Dimethylamine 2-(2-methyl-4-chlorophenoxy)propionate
007969–00127	Mecoprop AK Technical Acid	Methyl-4-chlorophenoxy)propionic acid
008378–00026	Dursban 92 With Plant Food	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
008378–00034	2.32 Dursban Granules	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
008660–00045	Malathion Grain Protectant (Premium Grade)	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
008660–00049	55% Malathion Concentrate	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
008660–00055	Malathion Grain Protectant	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
008660–00057	Patterson's Greenup 5% Malathion Dust	Dimethyl phosphorodithioate of diethyl mercaptosuccinate
008848–00061	Black Jack Ant Baits	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
009198–00084	Andersons Tee Time 30-3-5 with 0.65% Dursban	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
009198–00127	Twinlight Dursban Turf Insect Killer	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
009198–00132	The Andersons 0.97% Dursban Brand Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
009198–00200	Fertilizer Plus Insecticide/Preemergent Weed Control	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine
009444–00184	CB Strikeforce HPX II Residual with Dursban	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
009444–00202	Strikeforce II Residual with Dursban	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
010088–00085	Surface Insecticide	Octyl bicycloheptene dicarboximide Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
010088–00094	Ultra Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
010163–00166	Imidan 50-WP Agricultural Insecticide	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163–00170	Imidan 12.5-WP Home Garden Insecticide	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163–00173	Imidan 1-E Home Garden Insecticide	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163–00227	Prolate Technical Livestock Insecticide	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163 FL–00–0005	Imidan 70-WP Agricultural Insecticide	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163 NC–95–0009	Imidan 70-WSB/imidan 70 - WP	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163 NC–98–0006	Imidan 70-WSB	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163 OR–94–0045	Imidan 70-WP Agricultural Insecticide	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163 OR–94–0047	Imidan 70-WP Agricultural Insecticide	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163 SC–99–0005	Imidan 70-WP Agricultural Insecticide	Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
010163 WA–90–0027	Diazinon 14G	Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
010182 AL–83–0013	Ambush Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-, (3-phenoxyphenyl)methyl
010182 AL–94–0005	Gramoxone Extra Herbicide	Dimethyl-4,4'-bipyridinium dichloride
010182 MT–00–0006	Gramoxone Extra Herbicide	Dimethyl-4,4'-bipyridinium dichloride
010182 TX–01–0004	Cyclone Concentrate/Gramoxone Max	Dimethyl-4,4'-bipyridinium dichloride
010182 TX–96–0008	Gramoxone Extra Herbicide	Dimethyl-4,4'-bipyridinium dichloride
010404–00015	Lesco 2.32 Granular Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
010404–00027	Lesco Dursban(R) 0.97% Plus Fertilizer	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
010404–00029	Lesco Dursban(r) 0.74% Plus Fertilizer	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
010404–00040	Lesco Dursban(R) 0.42% Plus Fertilizer	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
010404–00081	Lesco 0.97 Dursban Granules	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
011474–00090	Sungro Buggone II Residual Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
011715–00018	Speer Pyrenone Dairy Aerosol	Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
011725–00010	Bio-Phenol 67	Amylphenol
015440–00012	Technical 2-(2,4-Dichlorophenoxy) Propionic Acid	Dichlorophenoxy)propionic acid
015440–00014	Marks CMPP (Mecoprop) Technical Acid	Methyl-4-chlorophenoxy)propionic acid
015440–00016	Marks Technical Iso-Octyl Ester of 2.4-DP	Isooctyl 2-(2,4-dichlorophenoxy)propionate
015440–00017	Technical Mecoprop	Methyl-4-chlorophenoxy)propionic acid
019713–00504	Drexel Chlorpyrifos 4E	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
019713 OR–93–0023	Ida, Inc. Diuron 80W	Dichlorophenyl)-1,1-dimethylurea
019713 OR–96–0024	Drexel Dimethoate 4EC	Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
019713 OR–97–0017	Drexel Dimethoate 4EC	Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
019713 WA–89–0011	Drexel Diuron 4l Herbicide	Dichlorophenyl)-1,1-dimethylurea
019713 WA–96–0018	Drexel Dimethoate 4EC	Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
019713 WA–97–0026	Drexel Dimethoate 4EC	Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
026693–00002	Killmaster II	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
028293–00087	Unicorn House and Carpet Spray	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
028293–00099	Unicorn Dursban Spray	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00121	Unicorn Dursban - Resmethrin Spray	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
028293–00142	Unicorn Packaging & Processing Plant Aerosol Spray	Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl d-trans-2,2-dimethyl-3-(2-methyl-1-propenyl)c Octyl bicycloheptene dicarboximide Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00149	Unicorn House and Carpet Spray II	Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl d-trans-2,2-dimethyl-3-(2-methyl-1-propenyl)c Octyl bicycloheptene dicarboximide Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00200	Unicorn Dursban 2E	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00201	Unicorn Dursban 2.5%G Granules	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00202	Unicorn Dursban 1.0%G Granules	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00203	Unicorn Dursban 1%-D Dust.	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00204	Unicorn Dursban 4E	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00205	Unicorn Dursban 1-12	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00210	Dursban 1-E Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00265	Unicorn Dursban 6.7% Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
034704–00055	Clean Crop Chlorpyrifos 1/2G Turf Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
034704–00065	Chlorpyrifos 2E	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
034704–00066	Clean Crop Chlorpyrifos 4E Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
034704–00351	Dibrom 8 Miscible	Dibromo-2,2-dichloroethyl dimethyl phosphate
034704–00423	Dursban 2 Coated Granules	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
034704–00448	Clean Crop Dursban 1G Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
034704–00546	Clean Crop Dibrom 8 EC	Dibromo-2,2-dichloroethyl dimethyl phosphate
034704–00616	Clean Crop N 1% Fly &Mosquito Spray	Dibromo-2,2-dichloroethyl dimethyl phosphate
034704–00693	Clean Crop Chlorpyrifos 50WP Seed Treater	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
034704–00788	Dimethoate Technical	Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
034704–00797	2,4-Dichlorophenoxy Acetic Acid Flakes	Dichlorophenoxyacetic acid
034704–00798	2,4-D Acid Technical	Dichlorophenoxyacetic acid
034704–00826	Chlorpyrifos Technical	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
034704 WA–82–0046	Clean Crop Sulfur 6 Flowable	Sulfur
034704 WA–93–0004	Clean Crop Low Vol 6 Ester Weed Killer	Acetic acid,(2,4-dichlorophenoxy)-, 2-ethylhexyl ester
034704 WA–95–0010	Clean Crop Atrazine 90WDG Turf & Conifer Herbicide	Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
034704 WA–97–0037	Clean Crop Trifluralin HF	Trifluralin (a,a,a-trifluro-2,6-dinitro-N,N-dipropyl-p-toluidine) (Note: a = alpha)
034704 WA–98–0003	Clean Crop Trifluralin HF	Trifluralin (a,a,a-trifluro-2,6-dinitro-N,N-dipropyl-p-toluidine) (Note: a = alpha)
035512–00036	Turf Pride With 0.67% Dursban	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
039039–00002	Max-Con Insecticide Ear Tags	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-, cyano(3-phenoxyphenyl)me
047006–00005	Orlik Dursban Granules	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
050534 NJ–96–0001	Bravo 720	Tetrachloroisophthalonitrile
050534 NJ–96–0002	Bravo 825	Tetrachloroisophthalonitrile
050534 NJ–97–0002	Bravo 825	Tetrachloroisophthalonitrile
050534 NJ–97–0003	Bravo 720	Tetrachloroisophthalonitrile
050534 WA–88–0013	Bravo 720	Tetrachloroisophthalonitrile
051036 MS–95–0001	Micro Flo Chlorpyrifos Termite Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
059639–00029	Orthene 80 Seed Protectant	Dimethyl acetylphosphoramidothioate
059639–00085	Orthene 80 WSP Seed Protectant	Dimethyl acetylphosphoramidothioate
059639 AZ–94–0002	Payload 15 Granular	Dimethyl acetylphosphoramidothioate
059639 AZ–95–0006	Danitol 2.4 EC Spray (insecticide-Miticide)	Cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate
059639 LA–02–0008	Orthene 90 S	Dimethyl acetylphosphoramidothioate
059639 OH–00–0006	Orthene 97 Pellets	Dimethyl acetylphosphoramidothioate
059639 WA–03–0003	Valor Herbicide	Fluoro-6-(3,4,5,6-tetrahydrophthalimido)-4-(2-propynyl)-1,4-benzoxazin-3(2H)-one
062719–00014	Dursban 1/2 G Granular	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00035	Dursban Turf Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00038	Lorsban 50-SI Wettable Powder	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00039	Lorsban 50W Wettable Powder	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00054	Dursban 1-D	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00068	Dursban 50W	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00167	Equity	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00255	Dursban 50W-N In Water Soluble Packets	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00293	Dursban 75WG	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00295	Lorsban 30G	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
062719–00316	Dursban* Plus Fertilizer 2	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00349	Lentrek 6	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00350	XRM-5222	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00354	Dursban 30 SEC	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00380	Lorsban 12.6%	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00382	Chlorfos 4E Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00383	Chlorfos 15G	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 CA–86–0066	Lorsban 50W	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 CA–94–0017	Lorsban 4E-HF	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 FL–92–0007	Lorsban 50W	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 HI–93–0011	Lorsban 50W Insecticide In Water Soluble Packets	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 ID–86–0017	Dow Dursban 4E Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 LA–96–0005	Dursban Tc Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 LA–96–0007	Equity Termiticide Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 MN–96–0003	Lorsban 4E-SG	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 MS–91–0008	Equity Termiticide Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 MS–93–0012	Dursban 4E Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 MS–96–0008	Dursban TC Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 MS–96–0009	Equity Termiticide Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 MS–96–0010	Dursban TC Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 MS–96–0014	Dursban TC Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 ND–95–0006	Lorsban 4E-SG	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 SC–96–0003	Dursban TC Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 SC–96–0004	Dursban TC Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 SC–96–0005	Equity Termiticide Concentrate	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 TN–90–0007	Dursban Turf Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate

TABLE—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
062719 WA–94–0014	Dithane DF Agricultural Fungicide	Zinc ion andmanganese ethylenebisdithiocarbamate, coordination product
062719 WA–96–0022	Dithane DF Agricultural Fungicide	Zinc ion andmanganese ethylenebisdithiocarbamate, coordination product
066196 AZ–98–0010	Lime-Sulfur Solution	Calcium polysulfide
066222–00004	Pyrinex Chlorpyrifos 2.3	Aromatic petroleum derivative solvent Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
066222–00005	Bonide Lawn and Ornamental Insecticide W/ Dursban* 2E	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
066222–00006	Pyrinex Chlorpyrifos 2E Insecticide	Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
071523 WA–98–0006	Vinco Formaldehyde Solution	Formaldehyde
071711 OR–02–0007	Moncut 70-DF	Trifluoro-3'-isopropoxy-o-toluanalide

Unless a request is withdrawn by the registrant within 180 days (30 days where indicated) of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during either of these comment periods.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000056	Eaton Jt & Co. Inc., 1393 E. Highland Rd., Twinsbu, OH 44087.
000070	Value Gardens Supply, LLC, PO Box 585, St. Jose, MO 64502.
000100	Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, Po Box 18300, Greensboro, NC 274198300.
000192	Value Gardens Supply, LLC, PO Box 585, St. Jose, MO 64502.
000228	Nufarm Americas Inc., D/b/a Riverdale - A Nufarm Co., 1333 Burr Ridge Parkway, Suite 125a, Burr Rid, IL 605270866.
000241	BASF Corp., PO Box 13528, Research Triangle Park, NC 27709-3528.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000279	FMC Corp. Agricultural Products Group, 1735 Market St., Philadelph, PA 19103.
000352	E. I. Du Pont De Nemours & Co., Inc., Dupont Crop Protection (S300/419), Stine-Haskell Research Center, Newark, DE 19714-0030.
000400	Crompton Mfg. Co., Inc., 74 Amity Rd, Betha, CT 06524-3402.
000464	The Dow Chemical Co., Attn: Rhonda Vance-Moeser, 1803 Building, Midla, MI 48674.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct Industrial Blvd, St Louis, MO 63122-6682.
000524	Monsanto Co., 600 13th Street, NW, Suite 660, Washington, DC 20005.
000769	Value Gardens Supply, LLC, PO Box 585, St. Jose, MO 64502.
000829	Southern Agricultural Insecticides, Inc., PO Box 218, Palmet, FL 34220.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
001022	IBC Mfg. Co, c/o Gail Early, 416 E. Brooks Rd., Memphis, TN 38109.
001386	Universal Cooperatives Inc., 1300 Corporate Center Curve, Eag, MN 55121.
001812	Griffin L.L.C., PO Box 1847, Valdos, GA 31603-1847.
002517	Brazos Associates, Inc., Agent For: Sergeant's Pet Care Products, Inc., 1806 Auburn Drive, Carrollt, TX 75007-1451.
002724	Wellmark International, 1100 E. Woodfield Rd., Suite 500, Schaumbu, IL 60173.
002935	Wilbur Ellis Co., PO Box 1286, Fres, CA 93715.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd, Kansas City, MO 641200013.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005481	AMVAC Chemical Corp., Attn: Jon C. Wood, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660-1706.
005625	Tempo Products Co., 6200 Cochran Rd., Sol, OH 44139.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
007501	Gustafson LLC, PO Box 660065, Dallas, TX 75266.
007969	BASF Corp., Agricultural Products, 26 Davis Drive, Research Triangle Park, NC 27709-3528.
008378	Knox Fertilizer Co Inc., W. Culver Rd., Kn, IN 46534.
008660	Sylorr Plant Corp., PO Box 142642, St. Louis, MO 63114-0642.
008848	Safeguard Chemical Corp., 411 Wales Ave, Bro, NY 10454.
009198	The Andersons Lawn Fertilizer Division, Inc., Dba/ Free Flow Fertilizer, Po Box 119, Maum, OH 43537.
009444	Waterbury Companies Inc., 120 Calhoun Street, Independen, LA 70443.
010088	Athea Laboratories Inc., PO Box 240014, Milwaukee, WI 53224.
010163	Gowan Co, PO Box 5569, Yuma, AZ 85366-5569.
010404	Lesco Inc., 15885 Sprague Rd., Strongsvil, OH 44136.
011474	Sungro Chemicals, Inc., P. O. Box 24632, Los Angeles, CA 90024.
011715	Speer Products Inc., 4242 B.F. Goodrich Blvd., Memphis, TN 381810993.
011725	Lewis & Harrison, Agent For: Bio-Tek Industries Inc., 122 C St NW, Ste 740, Washington, DC 20001.
015440	Registration & Regulatory Services, Agent For: A H Marks & Co Ltd, PMB 239, 7474 Creedmoor Rd., Raleigh, NC 27613.
019713	Drexel Chemical Co, 1700 Channel Ave., Memphis, TN 38113-0327.
026693	Positive Formulators, Inc., 1044 N. Jerrie Ave., Tucson, AZ 85711.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
034704	Loveland Products, Inc., PO Box 1286, Greel, CO 80632-1286.
035512	Registrations By Design Inc., Agent For: Howard Fertilizer & Chemical Co.,, 118 1/2 E Main Street, Suite 1, Sal, VA 24153.
039039	Y-Tex Corp., 1825 Big Horn Ave., Co, WY 82414.
047006	Phaeton Corp., 12385 Automobile Blvd., Clearwater, FL 33762.
050534	GB Biosciences Corp., 410 Swing Rd., Greensbore, NC 27419-5458.
051036	Micro-Flo Co. LLC, PO Box 772099, Memphis, TN 38117-2099.
059639	Valent U.S.A. Corp., 1600 Riviera Ave. Suite 200, Walnut Cre, CA 94596.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/2E225, Indianapolis, IN 46268-1054.
066196	Ag Formulators Inc., 5427 E. Central Ave., Fres, CA 93725.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave.- Ste 1100, New York, NY 10176.
071523	Holland America Bulb Farms, Inc., 1066 South Pekin Rd., Woodla, WA 98674.
071711	Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before periods indicated in **DATES** section. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 3, 2004.

Arnold E. Layne,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 04–18768 Filed 8–17–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0137; FRL–7361–1]

Methoxyfenozide; Notice of Filing Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0137, must be received on or before September 17, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@rps.gov.*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0137. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be

marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0137. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0137. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0137.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0137. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also, provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 6, 2004.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by Interregional Research Number 4 (IR-4) and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and

measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Number 4 (IR-4)

PP 3E6768, PP 3E6784, PP 3E6790, PP 3E6796, and PP 3E6801

EPA has received pesticide petitions (PP 3E6768, PP 3E6784, PP 3E6790, PP 3E6796, and PP 3E6801) from IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.544, by establishing tolerances for residues of the insecticide methoxyfenozide, benzoic acid, 3-methoxy-2-methyl, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide in or on the following raw agricultural commodities:

1. PP 3E6768 proposes the establishment of tolerances for spearmint, tops at 7.0 parts per million (ppm); peppermint, tops at 7.0 ppm; and dill at 7.0 ppm.

2. PP 3E6784 proposes the establishment of a tolerance for strawberry at 1.5 ppm.

3. PP 3E6790 proposes the establishment of tolerances for vegetable, root, subgroup 1A at 0.5 ppm, and vegetable, leaves of root and tuber, Group 2 at 30 ppm.

4. PP 3E6796 proposes the establishment of tolerances for papaya; star apple; sapote, black; mango; sapodilla; canistel; and sapote, mamey at 0.5 ppm. PP 3E6796 also proposes the establishment of a tolerance for coriander, leaves at 30 ppm.

5. PP 3E6801 proposes the establishment of tolerances for vegetable, legume, edible podded, subgroup 6A at 1.5 ppm; pea and bean, succulent shelled, subgroup 6B at 0.2 ppm; and vegetable, foliage of legume, except soybean, subgroup 7A at 35 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes summary of the petition prepared by the registrant, Dow AgroScience, 9330 Zionsville Road, Indianapolis, IN 46268.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of methoxyfenozide residues in plants and animals is adequately understood and was previously published in the **Federal Register** of July 5, 2000 (65 FR 41355) (FRL–6497–5).

2. *Analytical method.* Adequate enforcement methods are available for determination of methoxyfenozide residues in plant commodities. The available Analytical Enforcement Methodology was previously reviewed in the **Federal Register** of September 20, 2002 (67 FR 59193) (FRL–7198–5).

3. *Magnitude of residues.* Residue data for methoxyfenozide on commodities listed within this notice has been submitted.

B. Toxicological Profile.

The toxicological profile and endpoints for methoxyfenozide which supports this petition to establish tolerances were previously published in the **Federal Register** of September 20, 2002 (67 FR 59193).

C. Aggregate Exposure

1. *Dietary exposure.* Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population subgroups to residues of methoxyfenozide. These analysis cover all registered crops, as well as, uses pending with the Agency, active and proposed section 18 uses, and proposed IR-4 minor uses. There are no registered residential nonfat uses of methoxyfenozide.

i. *Food*—a. *Acute.* No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide including the acute neurotoxicity study in rats, the developmental toxicity study in rats and the developmental toxicity study in rabbits. Since no acute toxicological endpoints were established, Dow AgroSciences considers acute aggregate risk to be negligible.

b. *Chronic.* Chronic assessments were conducted to evaluate potential risks due to chronic dietary exposure of the U.S. population and selected population subgroups to residues of methoxyfenozide. Dow AgroSciences used the Dietary Exposure Evaluation Model (DEEM™, Novigen Sciences, Washington, DC) software for conducting a chronic dietary (food) risk analysis. Dow AgroSciences assumed 100% of crops would be treated and contain methoxyfenozide residues at the tolerance level.

ii. *Drinking water*—a. *Acute exposure.* Because no acute dietary endpoint was determined, Dow AgroSciences concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

b. *Chronic exposure.* Tier II screening-level assessments can be conducted using the simulation models screening concentration in Groundwater (SCI-GROW) and Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to generate estimated environmental concentrations (EECs) for ground water and surface water, respectively. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for methoxyfenozide (1.0 lb a.i./acre/season). PRZM/EXAMS was used to generate the surface water EECs because it can factor the persistent nature of the chemical into the estimates.

2. *Non-dietary exposure.* Methoxyfenozide is not currently registered for use on any residential non-food sites. Therefore, there is no non-dietary acute, chronic, short-term or intermediate-term exposure.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, it is assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the DEEM™ exposure assumptions, Dow AgroSciences has concluded that aggregate exposure to methoxyfenozide from the proposed new tolerances will utilize 22.2% of the chronic population adjusted dose (cPAD) for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1–2 years old at 50.9% of the cPAD. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a

lifetime will not pose appreciable risks to human health.

2. *Infants and children.* The toxicology data base for methoxyfenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2–generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to methoxyfenozide. There is a complete toxicity data base for methoxyfenozide an exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the completeness of the data base and the lack of prenatal and postnatal toxicity, EPA determined that an additional safety factor was not needed for the protection of infants and children.

Since no toxicological endpoints were established, acute aggregate risk is considered to be negligible. Using the exposure assumptions, Dow AgroSciences has concluded that aggregate exposure to methoxyfenozide from the proposed new tolerances will utilize 50.9% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

3. *Drinking water.* The EECs for assessing chronic aggregate dietary risk used by the Agency are 3.5 parts per billion (ppb) (in ground water, based on SCI-GROW) and 30 ppb (in surface water, based on the PRZM/EXAMS, long-term mean). The back-calculated drinking water levels of concern (DWLOCs) for assessing chronic aggregate dietary risk range from 501 ppb for the most highly exposed population subgroup (children 1–2 years old) to 2,778 ppb for the U.S. population (total).

The SCI-GROW and PRZM/EXAMS chronic EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for methoxyfenozide residues in drinking water as a contribution to chronic aggregate exposure. Dow AgroSciences thus concludes with reasonable certainty that residues of methoxyfenozide in drinking water will not contribute significantly to the aggregate chronic human health risk and that the chronic aggregate exposure from methoxyfenozide residues in food and drinking water will not exceed the Agency's level of concern (100% of the cPAD) for chronic dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the cPAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, conservative, and very protective of human health.

F. International Tolerances

There are no Codex or Canadian maximum residue levels (MRLs) established for residues of methoxyfenozide. Mexican MRLs are established for residues of methoxyfenozide in cottonseed (0.05 ppm) and maize (0.01 ppm). The U.S. tolerances on these commodities are 2.0 ppm and 0.05 ppm, respectively. Based on the current use patterns, the U.S. tolerance levels cannot be reduced to harmonize with the Mexican MRLs, so incompatibility will exist.

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0160; FRL–7364–6]

Glyphosate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0160, must be received on or before September 17, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0160. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **FederalRegister** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public

docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," andthen key in docket ID number OPP–2004–0160. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0160. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information andRecords Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0160.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0160. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 9, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Monsanto Company

PP 0F6195, 1F6273, 1F6274, and 3F6570

EPA has received pesticide petitions (0F6195, 1F6273, 1F6274, and 3F6570) from Monsanto Company, 600 13th St., NW., Suite 660, Washington, DC 20005, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.364 by establishing a regulation to permit residues of the herbicide glyphosate (*N*-phosphonomethyl) glycine in or on the following raw agricultural commodities:Alfalfa, seed at 0.5 parts per million (ppm); rice, grain at 15.0 ppm; and cotton, gin by-products at 150 ppm; wheat, forage at 10.0 ppm, wheat, hay at 10.0 ppm; and the following processed commodities: Rice, bran at 30.0 ppm; andrice, hulls at 25.0 ppm. Monsanto further proposes to delete the entire entries for alfalfa, forage at 175 ppm and alfalfa, hay at 400 ppm as these tolerances are no longer needed, and to revise the entry for grain, cereal group to read: Grain, cereal, group 15 except barley, field corn, grain sorghum, oats, rice and wheat at 0.1 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on these petitions.

The petitions request that 40 CFR 180.364 be amended by establishing tolerances for residues of the herbicide glyphosate in or on alfalfa, seed at 0.5 ppm; rice, grain at 15. 0 ppm; rice, bran at 25.0 ppm; rice, hulls at 30.0 ppm; wheat, forage at 10.0 ppm; and wheat, hay at 10.0 ppm, increasing the established tolerance for cotton, gin by-products from 100 ppm to 150 ppm; by deleting the tolerances for alfalfa, forage at 175 ppm and alfalfa, hay at 400ppm, and by revising the grain, cereal group tolerance to "except rice" and read as follows: Grain, cereal group 15 except barley, field corn, grain sorghum, oats, rice and wheat at 0.1 ppm. PP 0F6195 has been amended to delete the proposal for wheat, grain at 6 ppm that was announced earlier (May 17, 2002, 67 FR 18894) (FRL–6830–5). "The tolerances for alfalfa, rice, wheat, and cotton, gin by-products include both conventional and genetically altered crops." It is also proposed the 40 CFR 180.364 be amended by replacing the current listing "Vegetable, legume group (except soybean) at 5.0 ppm with the current crop group" pea and bean, dried shelled, except soybean, subgroup 6C at 5.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the acute toxic effects caused by glyphosate are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed in the following Table 2.

TABLE 1.—ACUTE TOXICITY OF GLYPHOSATE TECHNICAL

Guideline No.	Study Type	Results
870.1100	Acute oral	LD_{50} > 5,000 mg/kg Toxicity Category IV
870.1200	Acute dermal	LD_{50} > 5,000 mg/kg Toxicity Category IV
870.1300	Acute inhalation	The requirement for an acute inhalation LC_{50} study was waived
870.2400	Primary eye irritation	Corneal opacity or irritation clearing in 7 days or less Toxicity Category III
870.2500	Primary skin irritation	Mild or slight irritant Toxicity Category IV
870.2600	Dermal sensitization	Not a dermal sensitizer

TABLE 2.—TOXICITY PROFILE OF GLYPHOSATE TECHNICAL

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents mouse	NOAEL = 1,500 mg/kg/day in males and females LOAEL = 4,500 mg/kg/day in males and females based on decreased body weight gain
870.3100	90–Day oral toxicity rodents rat (range-finding)	NOAEL = < 50 mg/kg/day in males and female LOAEL = 50 mg/kg/day in males and females based on increased phosphorus and potassium values
870.3150	90–Day oral toxicity in rodents rat (aminomethyl phosphoric acid plant metabolite of glyphosate)	NOAEL = 400 mg/kg/day in males and females LOAEL = 1,200 mg/kg/day in males and females based on body weight loss and histopathological lesions of the urinary bladder
870.3485	28–Day inhalation toxicity - rat (exposure; 6 hours/day, 5 days/week for 4 weeks)	NOAEL = 0.36 mg/L LOAEL = > 0.36 high dose tested (HDT) mg/L, not established
870.3200	21-Day dermal toxicity - rabbit	NOAEL = 1,000 mg/kg/day in males and females LOAEL = 5,000 mg/kg/day based on slight erythema and edema on intact and abraded skin of both sexes, and decreased food consumption in females
870.3700	Prenatal developmental in rodents-rat	*Maternal* NOAEL = 1,000 mg/kg/day LOAEL = 3,500 mg/kg/day based on inactivity, mortality, stomach hemorrhages and reduced body weight gain *Developmental* NOAEL = 1,000 mg/kg/day LOAEL = 3,500 mg/kg/day based on increased incidence in the number of fetuses and litters with unossified sternebrae and decreased fetal body weight
870.3700	Prenatal developmental in nonrodents-rabbit	*Maternal* NOAEL = 175 mg/kg/day LOAEL = 350 mg/kg/day based on mortality, diarrhea, soft stools, and nasal discharge *Developmental* NOAEL = 350 mg/kg/day LOAEL = > mg/kg/day, not established

TABLE 2.—TOXICITY PROFILE OF GLYPHOSATE TECHNICAL—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects rat (3-generation)	*Parental/Systemic* NOAEL = 30 mg/kg/day LOAEL = > 30 HDT mg/kg/day, not established *Reproductive* NOAEL = 30 mg/kg/day LOAEL = > 30 HDT mg/kg/day, not established *Offspring* NOAEL = 10 mg/kg/day LOAEL = 30 mg/kg/day based on focal dilation of the kidney in male F3b pups
870.3800	Reproduction and fertility effects rat (2-generation)	*Parental/Systemic* NOAEL = 500 mg/kg/day in males and females LOAEL = 1,500 mg/kg/day in males and females based on soft stools, decreased body weight gain and food consumption. Focal dilation of the kidney observed at 30 mg/kg/day in the 3-generation study was not observed at any dose level in this study *Reproductive* NOAEL = > 30 1,500 HDT mg/kg/day in males and females LOAEL = > 1,500 HDT mg/kg/day in males and females, not established *Offspring* NOAEL = 500 mg/kg/day in males and females LOAEL = 1,500 mg/kg/day in males and females based on reduced pup weights during the second and third weeks of lactation
870.4100	Chronic toxicity - dogs	NOAEL = 500 HDT mg/kg/day in males and females LOAEL = > 500 mg/kg/day in males and females, not established
870.4300	Chronic/carcinogenic city rats	NOAEL = 362 mg/kg/day in males LOAEL = 940 mg/kg/day in males based on decreased urinary pH, increased incidence of cataracts and lens abnormalities, and increased absolute and relative (to brain) liver weights NOAEL = 457 mg/kg/day in females LOAEL = 1,183 mg/kg/day in females based on decreased body weight gain No evidence of carcinogenicity
870.4300	Carcinogenicity mice	NOAEL = 750 mg/kg/day in males LOAEL = 4,500 mg/kg/day in males based on significant decreased body weight gain, hepatocyte necrosis, and interstitial nephritis NOAEL = 750 mg/kg/day in females LOAEL = 4,500 mg/kg/day in females based on significant decreased body weight gain, increased incidence of proximal tubule epithelial basophilia, and hypertrophy in the kidney of females No evidence of carcinogenicity
870.5100	Gene mutation assay in *S. typhimurium* strains	Negative - non-mutagenic when tested up to 1,000 µg/plate, in presence and absence of activation, in *S. typhimurium* strains TA98, TA100, TA1535 and TA1537
870.5100	Gene mutation assay in *E. coli* WP2hcrA and *S. typhimurium* strain	Negative for reverse gene mutation, both with and without S-9, up to 5,000 µg/plate (or cytotoxicity) with *E. coli* WP2hcrA and *S. typhimurium* TA98, TA100, TA1535, TA1537, and TA1538
870.5300	Gene mutation assay in Chinese hamster ovary (CHO) cells/HGPRT	Negative - non-mutagenic at the HGPRT locus in Chinese hamster ovary cells tested up to cytotoxic concentrations or limit of solubility, in presence and absence of activation
870.5385	Cytogenetics - *In vivo* bone marrow chromosomal aberration assay	Negative - non-mutagenic in rat bone marrow chromosome assay up to 1,000 mg/kg in both sexes of Sprague Dawley rats

TABLE 2.—TOXICITY PROFILE OF GLYPHOSATE TECHNICAL—Continued

Guideline No.	Study Type	Results
870.5550	Other mechanisms - *in vitro* rec-assay with *B. subtilis*	There was no evidence of recombination in the rec-assay up to 2,000 µg/disk with *B. subtilis* H17 (rec+) and M45 H17 (rec+) and M45 (rec-) (rec-)
870.6200	Acute neurotoxicity screening battery in rats	N/A
870.6200	Subchronic neurotoxicity screening battery in rats	N/A
870.6300	Developmental neurotoxicity in rats	N/A
870.7485	Metabolism/pharmacokinetics - rat	Absorption was 30–36% in males and females. Glyphosate was excreted unchanged in the feces and urine (97.5% minimum). The only metabolite present in the excreta was AMPA. Less than 1% of the absorbed dose remained in the carcass, primarily bone. Repeat dosing did not alter metabolism, distribution, and excretion.
870.7600	Dermal penetration	N/A

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD =NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic population adjusted dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE (cancer) = point of departure/exposures) is calculated. A summary of the toxicological endpoints for glyphosate used for human risk assessment is shown in the following Table 3.

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR GLYPHOSATE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–50 years old and general population)	None	None	An acute dietary endpoint was not selected for the general population or females 13–50, since an appropriate endpoint attributable to a single exposure was not used in the toxicology data base
Chronic dietary (all populations)	NOAEL = 175 mg/kg/day UF = 100 Chronic RfD = 1.75 mg/kg/day	FQPA SF = 1 cPAD = cRfD FQPA SF = 1.75 mg/kg/day	Developmental toxicity study rabbit LOAEL = 350 mg/kg/day based on diarrhea, nasal discharge and death in maternal animals

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR GLYPHOSATE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-term, and intermediate term incidental oral (Residential)	NOAEL = 175 mg/kg/day	LOC for MOE = 100	Developmental toxicity study - rabbit LOAEL = 350 mg/kg/day based on diarrhea, nasal discharge and death in maternal animals
Short-term, and long-term dermal (1-30 days, 1-6 months, 6 months - lifetime) (Occupational/Residential)	None	None	Based on the intermediate systemic NOAEL of 1,000 mg/kg/day inthe 21–day dermal toxicity study in rabbits, and the lack of concern for developmental and reproductive effects, the quantification of dermal risks is not required
Short-term, intermediate-term and long-term inhalation (1-30 days, 1-6 months, 6 month-lifetime) (Occupational/Residential)	None	None	Based on the systemic toxicity NOAEL of 0.36 mg/L HDT in the 28–day inhalation toxicity study in rats, and the physical characteristics of the technical (wetcake), the quantification of inhalation risks is not required
Cancer (oral, dermal, inhalation)	Cancer classification (Group E)	Risk assessment not required	No evidence of carcinogenicity

*The reference to the FQPA safety factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.364) for the residues of glyphosate, in or on a variety of raw agricultural commodities. The current proposal to establish tolerances for rice, bran at 30 parts per million (ppm); rice, grain at 15 ppm; rice, hulls at 25 ppm; wheat, forage at 10 ppm; wheat, hay at 10 ppm; and alfalfa, seed at 0.5 ppm, and to increase the established glyphosate tolerance for cotton, gin by-products to 150 ppm, is not expected to result in an increase in the dietary burden for cattle, poultry, and hogs. Respective dietary burdens of 210 ppm and 220 ppm were recently estimated by the Agency for dairy and beef cattle, including a contribution from alfalfa hay as the roughage component of the diet with a tolerance of 400 ppm. Risk assessments were conducted by EPA to assess dietary exposures from glyphosate in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. A review of the toxicity data base, including the developmental toxicity studies in rats and rabbits, did not provide an endpoint that could be used to quantitate risk to the general population and to females 13-50 years old from a single-dose administration of glyphosate. Therefore, no acute dietary analysis was conducted for glyphosate.

ii. *Chronic exposure.* The glyphosate chronic dietary exposure analysis was conducted using the dietary exposure evaluation model (DEEM) software Version 7.87, which incorporates consumption data from the United States Department of Agriculture (USDA) Continuing Survey of Food Intake by Individuals (CSFII), 1989–1992. The 1989–1992 data are based on the reported consumption of more than 10,000 individuals over 3 consecutive days, and therefore, represent more than 30,000 unique person days of data. Foods as consumed (i.e., apple pie) are linked to raw agricultural commodities and their food forms (i.e., apples-cooked/canned or wheat-flour) by recipe translation files internal to the DEEM software. Consumption data are averaged for the entire U.S. population and within population subgroups for chronic exposure assessment, but are retained as individual consumption events for acute exposure assessment.

For chronic dietary exposure and risk assessments, an estimate of the residue level in each food or food-form (i.e., orange or orange-juice) on the commodity residue list is multiplied by the average daily consumption estimate for that food/food form. The resulting residue consumption estimate for each food/food form is summed with the residue consumption estimates for all other food/food forms on the commodity residue list to arrive at the total estimated exposure. Exposure estimates are expressed in milligrams/kilogram body weight day (mg/kg bwt/day) and as a percent of the cPAD for chronic exposure. This procedure is performed for each population subgroup.

The Tier 1 chronic dietary exposure analysis for glyphosate is an upper bound estimate of chronic dietary exposure. The chronic dietary exposure analysis was performed for the general U.S. population and all population subgroups using DEEM assuming tolerance levels residues and 100% crop treated data for the proposed commodities and all registered uses. For chronic dietary risk, the Agency's LOC is less than 100% cPAD. Dietary exposure estimates for representative population subgroups are presented in Table 4. The results of the chronic analysis indicate that the estimated chronic dietary risk as represented by the percent cPAD is below the Agency's LOC (100% cPAD) for the U.S. population and all population subgroups.

TABLE 4.—SUMMARY OF RESULTS FROM CHRONIC DEEM ANALYSIS OF GLYPHOSATE

Subgroup	Exposure (mg/kg/day)	%cPAD
U.S. population (total)	0.033880	1.9
All infants (< 1 year old)	0.075573	4.3
Children (1-6 years old)	0.072077	4.1
Children (7-12 years old)	0.047851	2.7
Females (13-50 years old)	0.025983	1.5
Males (13-19 years old)	0.032773	1.9
Males (20+ years old)	0.028664	1.6
Seniors (55+ years old)	0.023927	1.4

iii. *Cancer.* The HED Cancer Peer Review Committee classified glyphosate as a Group E chemical, negative for carcinogenicity in humans, based on the absence of evidence of carcinogenicity in male and female rats as well as in male and female mice.

iv. Anticipated residue and percent crop treated (PCT) information. The Agency used tolerance levels and 100% PCT data for the proposed commodities and all registered uses.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for glyphosate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of glyphosate.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentration in Groundwater (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a PC area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent (%) %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. Since DWLOCs address total aggregate exposure to glyphosate, they are further discussed in section E below.

Based on the GENEEC and SCI-GROW models, the EECs of glyphosate for acute exposures are estimated to be 21 parts per billion (ppb) for surface water and 0.0038 ppb for ground water. The EECs for chronic exposures are estimated to be 0.83 ppb for surface water and 0.0038 ppb for ground water, based on glyphosate treatment crops. To estimate the possible concentration of glyphosate in surface water resulting from direct application to water, the Agency assumed application to a water body 6 feet deep. At an application rate of 3.75 lb acid equivalent (ae)/A, the estimated concentration is 230 ppb. Because the glyphosate water-application estimate is greater than the crop application estimate, 230 ppb is the appropriate value to use in the chronic risk estimate.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

i. *Non-occupational (recreational) exposures.* Glyphosate is currently registered for use on the following residential non-dietary sites: Recreational areas, including parks and golf courses for control of broadleaf weeds and grasses, and lakes and ponds, including reservoirs for control of nuisance aquatic weeds. Based on the registered uses, adult and child golfers are anticipated to have short-term post-application dermal exposure at golf courses. Swimmers (adults, children and toddlers) are anticipated to have short-term post-application dermal and incidental ingestion exposures. However, since the Agency did not select dermal endpoints, no post-application dermal assessment is included; only a post-application incidental ingestion exposure assessment (swimmers) is included. Risk estimates for incidental ingestion by swimmers (adults, children, and toddlers) ranged from 7,600 to 36,000. It should be noted however, that glyphosate is used for non-selective weed control on emerged aquatic weeds. In this use pattern, it is unlikely that swimmers would be present in waterbodies with floating weeds present. Thus, the inclusion of the swimmer incidental ingestion exposure assessment is considered by the Agency to be conservative. Table 5 presents a summary of assumptions used to

estimate the exposure to adult and toddler child swimmers and the corresponding risk estimates.

TABLE 5.—ASSUMPTIONS AND RISK ESTIMATES FOR POST-APPLICATION SWIMMER EXPOSURE ASSESSMENTS FOR GLYPHOSATE, ISOPROPYLAMINE SALT

Exposure Scenario	AR[1] (lb a.e./A)	Maximum Concentration in water (mg/L)[2]	Potential Dose Rate (PDR; oral mg/kg bw/day)[3]	Short-term MOE[4]
Incidental oral ingestion, adult-female	3.75	1.38	0.00493	36,000
Incidental oral, toddler			0.023	7,600

[1]Application rate from registered labels for aquatic weed control using glyphosate IPA salt (ex. label = EPA Reg. No. 524–343; max rate = 7.5 pints/A containing 4 lb ae glyphosate/gal. x 1 gal./4 pints = 3.75 lb ae/A.
[2]Maximum concentration in water (top 1 ft.) = 3.75 lb ae/A x 1A/43,560 ft^2 x 454,000 mg/lb x 1/ft x ft^3 /28.32 L = 1.38 mg/L.
[3]PDR, incidental oral exposure = concentration, Cw (mg/L) x ingestion rate, IgR (L/hr) x exposure time, ET (hrs/d) x 1/BW (adult-female = 60 kg; toddler = 15 kg).
[4]MOE = NOAEL/PDR; short-term incidental oral NOAEL = 175 mg/kg bw/d; The LOC for adult females and toddlers for short-term, incidental oral exposures is MOEs < 100.

The MOEs presented in Table 5 for post-application exposure by swimmers to glyphosate in aquatic weed control applications are greater than 100 and do not exceed the Agency's LOC for short-term non-occupational (recreational) exposures (MOEs less than 100).

ii. *Residential exposures.* Glyphosate is also registered for broadcast and spot treatments on home lawns and gardens by homeowners and by lawn care operators (LCOs). Based on the registered residential use patterns, there is a potential for short-term dermal and inhalation exposures to homeowners who apply products containing glyphosate (residential handlers). Additionally, based on the results of environmental fate studies, there is also a potential for short- and intermediate-term post-application dermal exposures by adults and toddlers and incidental ingestion exposures by toddlers. However, since the Agency did not select short-term or intermediate-term dermal or inhalation endpoints, no residential handler or post-application dermal assessment is included; only a post-application toddler assessment for incidental ingestion exposures is included. Risk estimates for toddler post-application incidental ingestion exposures ranged from 7,200 to greater than 10^6. All recreational and residential exposures assessed do not exceed the Agency's level of concern (MOEs less than 100). Table 6 provides a summary of the short-term and intermediate-term risk estimates for post-application incidental ingestion exposures to toddlers.

TABLE 6.—SUMMARY OF TODDLER INCIDENTAL INGESTION EXPOSURES AND RISK ESTIMATES FOR RESIDENTIAL USE OF GLYPHOSATE, ISOPROPYLAMINE SALT[1]

Activity	AR (lbs a.e./A)[2]	Residue Estimate[3]	PDR (mg/kg bw/d)[4]	Short-term/Intermediate-term MOE[5]
Hand-to-mouth	1.62	DFR: 0.908 µg/cm^2	0.0242	7,200
Object-to-mouth		DFR: 3.63 µg/cm^2	0.00605	29,000
Soil ingestion		Soil residue: 12.2 µg/g soil	8.13 x 10^{-5}	10^{-6}

[1]Sources: Standard Operating Procedures for Residential Exposure Assessments, Draft, December 17, 1997 and Exposure SAC Policy No. 11, February 22, 2001: Recommended Revisions to the SOPs for Residential Exposure.
[2]AR = maximum application rate on Roundup ProDry label (EPA Reg. No. 524–505) for residential lawn treatment.
[3]Residue estimates based on the following protocol from the Residential SOPs:
Hand-to-mouth DFR = 1.62 lb ae/A x 0.05 x (4.54 x 10^{-8} µg/lb ae) x (2.47 x 10^{-8} A/cm^2) = 0.908 g/cm^2.
Object-to-mouth DFR = 1.62 lb ae/A x 0.20 x (4.54 x 10^8 µg/lb ae) x (2.47 x 10^{-8} A/cm^2 = 3.63 µg/cm^2.
Soil Residue = 1.62 lb ae/A x fraction of residue in soil (100%)/cm x (4.54 x 10^8 µg/lb ae) x (2.47 x 10^{-8} A/cm^2) x 0.67 cm^3/g = 12.2 µg/g soil.
[4]Potential Dose Rate (PDR; already normalized to body weight of toddler).
Hand-to-mouth PDR = (0.908 g/cm^2 x 0.50 x 20 cm^2/event x 20 events/hr x 10^{-3} mg/µg x 2 hrs/d)/15 kg = 0.0242 mg/kg bwt/day.
Object-to-mouth PDR = (3.63 g/cm^2 x 25 cm^2 /d x 10^{-3} mg/µg)/15 kg = 0.00605 mg/kg bwt/day.
Soil Ingestion PDR = (12.2 µg/g soil x 100 mg soil/d x 10^{-6} g/µg)/15 kg = 8.13 x 10^{-5} mg/kg bwt/day.
[5]MOE = NOAEL/PDR, where the short-term incidental oral NOAEL = 175 mg/kg/day the Agency's LOC is for MOEs < 100 (short-term residential).

All MOEs calculated for post-application toddler exposures do not exceed the Agency's level of concern for residential exposures (MOEs less than 100).

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether glyphosate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glyphosate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this

tolerance action, therefore, EPA has not assumed that glyphosate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using UFs (safety) in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The toxicology data base for glyphosate is adequate according to the Subdivision F Guideline requirements for a food-use chemical. Acceptable developmental toxicity studies in the rat and rabbit are available, as is an acceptable 2-generation reproduction study in the rat. Based on the available data, the Agency determined that there is no evidence of either a quantitative or qualitative increased susceptibility following *in utero* glyphosate exposure to rats and rabbits, or following prenatal/postnatal exposure in the 2-generation reproduction study in rats.

3. *Conclusion.* There is a complete toxicity data base for glyphosate and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency determined that the FQPA safety factor to protect infants and children can be removed (reduced from 10X to 1X) for all population subgroups and exposure scenarios because:

1. The toxicology data base is complete.

2. A developmental neurotoxicity study is not required.

3. The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute aggregate risk (food + drinking water).* The Agency did not identify an appropriate acute dietary endpoint that is the result of a single-dose administration of glyphosate. Accordingly, glyphosate is not expected to pose an acute risk.

2. *Chronic aggregate risk (food + drinking water).* Using the exposure assumptions described in this unit for chronic exposure (tolerance level residues and 100% crop treated data for all proposed commodities and registered uses), EPA has concluded that exposure to glyphosate from food will utilize 1.9% of the cPAD for the U.S. population, 4.3% of the cPAD for all infants (less than 1–year old) and 4.1% of the cPAD for children 1-6 years old. The results of the chronic analysis (Table 4 in this unit) indicate that the chronic dietary risk estimates for the general U.S. population and all population subgroups associated with the existing and proposed uses of glyphosate do not exceed the Agency's LOC (less than 100% of the cPAD). Based on the use pattern, chronic residential exposure to residues of glyphosate is not expected. In addition, there is potential for chronic dietary exposure to glyphosate in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 7 below:

TABLE 7.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO GLYPHOSATE

Scenario/Population Subgroup	cPAD,mg/kg/day	Chronic Food Exposure mg/kg/day	Maximum Chronic Water Exposure[1], mg/kg/day	Ground Water EEC, ppb	Surface Water EEC, ppb	Chronic DWLOC[2], ppb
U.S. population	1.75	0.033880	1.716120	0.0038	230	60,000
All infants (< 1–year old)	1.75	0.075573	1.674427	0.0038	230	17,000
Children (1-6 years old)	1.75	0.072077	1.677923	0.0038	230	17,000

TABLE 7.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO GLYPHOSATE—Continued

Scenario/Population Subgroup	cPAD,mg/kg/day	Chronic Food Exposure mg/kg/day	Maximum Chronic Water Exposure[1], mg/kg/day	Ground Water EEC, ppb	Surface Water EEC, ppb	Chronic DWLOC[2], ppb
Children (7-12 years old)	1.75	0.047851	1.702149	0.0038	230	17,000
Females (13-50 years old)	1.75	0.025983	1.724017	0.0038	230	52,000
Males (13-19 years old)	1.75	0.032773	1.717227	0.0038	230	60,000
Males (20+ years old)	1.75	0.028664	1.721336	0.0038	230	60,000
Seniors (55+ years old)	1.75	0.023927	1.726073	0.0038	230	60,000

[1]Maximum chronic water exposure (mg/kg/day) = cPAD (mg/kg/day) - chronic food exposure from DEEM™ (mg/kg/day).
[2]The chronic DWLOCs were calculated as follows: DWLOC (µg/L) = maximum water exposure (mg/kg/day) x body weight (kg)/consumption (L/day) x 0.001 mg/µg.

3. *Short-term/intermediate-term aggregate risk (food + residential + water).* In aggregating short-term-/intermediate-term risk, HED considered background chronic dietary exposure (food + water) and short-term/intermediate-term incidental oral exposures (see Tables 6 and 7). Because the incidental oral ingestion exposure estimates for toddlers from residential turf exposures (Table 7) exceeded the incidental oral exposure estimates from post-application swimmer exposures (Table 6), the Agency conducted this risk assessment using exposure estimates from just the worst-case situation. No attempt was made to combine exposures from the swimmer and residential turf scenarios due to the low probability of both occurring.

The total short-term/intermediate-term food and residential aggregate MOEs are 1,800–2,300. As these MOEs are greater than 100, the short-term/intermediate-term aggregate risk does not exceed the Agency's LOC. For surface water and ground water, the EECs of glyphosate are less than the DWLOCs for glyphosate in drinking water as a contribution to short-term/intermediate-term aggregate exposure. Therefore, the Agency concludes with reasonable certainty that residues of glyphosate in drinking water do not contribute significantly to the short-term/intermediate-term aggregate human health risk at the present time. Table 8 summarizes the short-term/intermediate-term aggregate exposure to glyphosate residues.

TABLE 8.—SHORT-TERM/INTERMEDIATE-TERM AGGREGATE RISK AND DWLOC CALCULATIONS FOR EXPOSURE TO GLYPHOSATE RESIDUES SHORT-TERM/INTERMEDIATE-TERM EXPOSURE SCENARIO

Population	Aggregate MOE (food+ residential)[1]	Aggregate Level of Concern (LOC) or Target MOE[2]	Surface Water EEC[3] (ppb)	Ground Water EEC[3] (ppb)	Short-Term/ Intermediate-Term DWLOC[4], (ppb)
All Infants <1 year old)	1,900	100	230	0.0038	17,000
Children (1-6 years old)	1,800	100	230	0.0038	17,000
Children (7-12 years old)	2,300	100	230	0.0038	17,000

[1]Aggregate MOE = NOAEL/(Average food exposure + Residential exposure).
[2]Basis for the target MOE: interspecies and intraspecies uncertainty factors totaling 100.
[3]The glyphosate use producing the highest level was used.
[4]DWLOC (µg/L or ppb) = maximum water exposure (mg/kg/day) x bwt (kg) / water consumption (L) x 10^{-3} mg/µg (10 kg bwt assumed).

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to glyphosate residues.

F. Analytical Enforcement Methodology

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant and livestock commodities. These methods include Gas Liquid Chromatography (GLC) (Method I in Pesticides Analytical Manual (PAM) II; the limit of detection is 0.05 ppm) and High Performance Liquid Chromatography (HPLC) with fluorometric detection. Use of the GLC method is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A Gas Chromatography/Mass Spectrometry (GC/MS) method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL). Thus, adequate analytical methods are available for residue data collection and enforcement of the proposed tolerance changes for glyphosate.

G. International Residue Limits

Codex and Mexican maximum residue limits (MRLS) are established for residues of glyphosate (glifosato) per se and Canadian MRLs are established for combined residues of glyphosate and AMPA in a variety of raw agricultural, processed, and animal commodities. Currently no relevant Codex MRL for cotton gin by-products is established. The proposed "rice, grain" tolerance of

15.0 ppm is based on crop field trial data obtained when using glyphosate-tolerant rice and thus cannot be lowered to maintain harmonization with the CODEX MRL of 0.1 ppm for residues of glyphosate in or on this commodity. This petition proposes no additional numerical changes that would effect agreement between United States tolerances and Codex MRLs.

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BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 2004.

A. Federal Reserve Bank of Cleveland (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. KEYCORP and KC Subsidiary, Inc. both in Cleveland, Ohio; to merge with Evertrust Financial Group, Inc., and thereby indirectly acquire Evertrust Bank, both in Everett, Washington.

Board of Governors of the Federal Reserve System, August 12, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–18895 Filed 8–17–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Ambulatory Care CAHPS® (ACAHPS) Test Sites

AGENCY: Agency for Healthcare Research and Quality (AHRQ), DHHS.

ACTION: Notice of request.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is soliciting volunteer sites for the testing of a draft Ambulatory CAHPS® (ACAHPS) instrument. This instrument will be part of a suite of standardized patient surveys that are reliable, valid, and provide a flexible, modular approach to measurement. This goal is in direct response to requests from stakeholders to revise the CAHPS® tool in order to measure different levels of ambulatory health care to provide practical information for quality improvement for multiple and more varied audiences. The result will be data derived from patients' perspectives that are more actionable for quality improvement than the current CAHPS® instrument.

AHRQ has initiated the redesign of the CAHPS instrument to include different levels of ambulatory health care delivery, i.e., services provided by individual primary care clinicians (such as physicians, physician assistants, or nurse practitioners), sites of care (that is a particular geographic location or facility from which care is delivered) or group practices (where two or more practitioners legally organize as a medical group to deliver care under certain conditions), and health plans (the payor of health care services in either fee-for-service or managed care arrangements). These levels are not necessarily relevant to all survey users. The modular approach to the ACAHPS instrument allows users to assess the quality of ambulatory care in their particular market while maintaining comparability to the CAHPS survey users in other markets.

AHRQ will respond to stakeholder input to provide users with a flexible and modular approach to assess the quality of ambulatory care for all of the functions at each of the delivery levels listed above, using instruments specific to plans, groups or sites, or physicians. Presently, we are interested in soliciting volunteers to be test sites for the ACAHPS instrument. The instrument will be tested beginning in 2004 and continuing into 2005.

Testing the ACAHPS Instrument

Survey Method Issues

The following are some examples to methodological studies that AHRQ plans to address during the pilot test of the ACAHPS instrument, and which you may be willing to participate in:

1. Testing of mode effects (mail versus telephone) within levels of ambulatory care. Because ACAHPS will be fielded by both mail and telephone it is a primary concern to test and revise the instrument in these two modes in order to ensure comparability across these modes.

2. Testing in other modes. We are also interested in testing ACAHPS administration in other modes to assess mode effect and response rates.

3. Testing the use of screener items versus non- screener items. CAHPS® surveys traditionally use some screener items to establish whether the respondent falls within a particular category to determine whether a question is appropriate or whether the response in meaningful. Through additional testing of the draft instrument, it can be determined whether screeners are necessary and appropriate.

4. Assessing the impact on measurement of similar concepts when using a reference period of care versus visit-specific care. Some surveys at the physician level and group level use a visit-specific reference for survey items. Others use a reference period (e.g., the last six months).

5. Testing the adequacy of different response scales. We wish to test the benefits of scales of differing lengths (e.g., four vs. six points).

6. Assessing supplemental item placement. We wish to test the effects of embedding additional questions within the ACAHPS instrument.

7. Testing the equivalence of the English and Spanish versions of the draft instrument.

8. Assessing the correlation of survey measures with clinical measures of quality.

9. Testing the effect on response rate of different survey materials, taking into account incremental changes in cost. There is some evidence in the survey research literature that response rate can

be influenced by the type of survey materials used. As a general rule, impersonal materials from a source of lower status will result in lower response rates than personalized materials from a source of higher status. Cost could be an issue, as personalized materials may cost more than impersonal materials.

10. Psychometric analyses to evaluate the instrument. Examples of characteristics to be evaluated are:

- Quality of item responses (missing item rates, skip pattern errors);
- Factors associated with item response rates;
- Factors associated with survey response rates;
- Construct validity of composites and ratings;
- Internal consistency;
- Language equivalence;
- Components of variance; and
- Case mix adjustment.

11. Assessing sampling and survey operations procedures.

Criteria for Additional Test Site Selection

While AHRQ would ideally like to provide wide access to the survey for testing, resource limitations require the establishment of some selection criteria. Test sites must be able to provide the resources for data collection using the ACAHPS survey and agree to submit the data to a central repository for analysis. Ambulatory care plans, groups, and physicians may volunteer to participate in the testing program individually, or in a group, in cooperation with an association or other coalition. Potential testing sites will be chosen based on their ability to meet the analytic needs of the ACAHPS development effort. Thus, selection from among potential candidate sites will be made using the practical criteria enumerated below. Criteria for selection of the voluntary test sites are designed to achieve diversity in the characteristics of the sites, obtain the most reliable and valid data possible, and to maximize the use of limited resources allotted for this work.

For selection, a test site must:

1. Be able to pay the full cost of data collection and database creation using specifications provided by AHRQ;

2. Be able to field the survey within the timeframe specified by AHRQ to be determined at the time of selection (Most of the testing will be done in 2004 and 2005. Applicants should indicate their ability to carry out the work during those periods.);

3. Employ a survey vendor with an established record of patient survey experience;

4. Be able to provide an adequate sample size to meet the needs of analyses;

5. Be able to adapt survey implementation as requested by AHRQ to meet the needs of the experimental design; and

6. Be able to provide a person to coordinate the test site work with AHRQ.

Selection of test sites will be determined at the sole discretion of AHRQ.

Information Requirements: To volunteer to participate as a voluntary test site, please provide the following information:

1. Volunteer site(s) name(s) and location(s).

2. Contact person information including name and title, address, telephone number, fax number and e-mail address.

3. Coordinator for site data collection information (if different from contact person) including name and title, address, telephone number, fax number and e-mail address.

4. Indication of which studies you will or will not be willing to participate in (See list of possible studies in Survey Method Issues under Testing the ACHPS Instrument.).

5. Number of plans/groups/sites/physicians proposed for inclusion in the testing.

6. Evidence that plan/group/site/physician is willing to participate (*i.e.*, acknowledgement or confirmation from senior administrator).

7. Average number of patient visits per month.

8. Number of patients.

9. Name of current surveys being used by the site and modes of administration of each survey used.

10. Name of current survey vendors working with site(s).

11. Statement or affidavit indicating authorization to commit the organization(s) to pay the specific estimated cost of sample selection, data collection, database preparation and coordination with AHRQ.

12. Current schedule for data collection of patient survey data, if you have one.

13. Process and schedule for selecting a vendor for the proposed testing or name of vendor already selected.

DATES: Please submit requested information on or before October 18, 2004.

ADDRESSES: Submissions should include a brief cover letter and the requested information about the potential site(s). They may be in the form of an e-mail with attachments, or a letter, preferably with an electronic file in a standard word processing format, (e.g., Microsoft Word or Word Perfect) on a 3½ inch diskette. E-mail submissions are preferred and will be acknowledged upon receipt.

FOR FURTHER INFORMATION CONTACT: E-mail responses to this request should be submitted to, or for further information contact: Charles Darby, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20904, Phone: (301) 427–1324, Fax: (301) 427–1341, E-mail: *cdarby@ahrq.gov*.

In order to facilitate handling of submissions, please include all requested information about the candidate facilities. Please do not use acronyms. Electronic submissions are strongly encouraged.

SUPPLEMENTARY INFORMATION: There are several functional areas of ambulatory care that existing instruments (or items) speak to at specific delivery levels, but presently, not every level of ambulatory care delivery is addressed. Functional areas include: access; communication; courtesy and respect; shared decision making; coordination/integration of care; health promotion and education; customer service and decision support. Some functions are specific to one delivery level, while others are the shared responsibility of multiple levels of care. These functions are assessed because they are necessary in maintaining high quality care, they have been determined to be important to consumers in selecting health care, and they are aspects of care for which consumers are the best or only judge.

Background

Since 1995, the only ambulatory CAHPS® survey has been focused on the health plan level, though there are different versions across types of plans from fee-for-service through HMOs, as well as optional modules. Significant stakeholder interest has emerged in using a standard CAHPS® survey beyond the health plan level specifically for group practices and clinician-level surveys.

The idea behind ACAHPS is to provide flexible, modular approach to assessing the quality of ambulatory care at different levels of the health care system while still retaining the valuable aspects of the current CAHPS® Health Plan Survey such as industry-wide standardization of measures for comparability.

Although many combinations of ACAHPS modules are possible, the CAHPS Consortium plans to simplify the task of constructing a survey by developing several sets of pre-packaged

survey instruments and data collection protocols. These surveys will be designed to address the most common uses based on the market research completed in 2003 as well as the on-going input from stakeholders. We will also provide guidelines for reporting the results of these surveys to external and internal audiences.

In addition, we will design some simple decision trees to help users assess their needs and recommend a prepackaged survey or help users to build their own using the ACAHPS modules. Technical assistance will continue to be offered from the CAHPS–SUN Helpline, 1–800–492–9261 and the Web site located at *www.cahps-sun.org.*

Dated: August 7, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–18851 Filed 8–17–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–0138]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

Proposed Project

Pulmonary Function Testing Course Approval Program, 29 CFR 1910.1043, OMB No. 0920–0138—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

NIOSH has the responsibility under the Cotton Dust Standard, 29 CFR 1920.1043, for approving courses to train technicians to perform pulmonary function testing in the Cotton Dust Industry. Successful completion of a NIOSH-approved course is mandatory under the Standard. To carry out its responsibility, NIOSH maintains a Pulmonary Function Testing Course Approval Program. The program consists of an application submitted by potential sponsors who seek NIOSH approval to conduct courses. The application form and added materials, including an agenda, vitae, and course materials are reviewed by NIOSH to determine if the applicant has developed a program which adheres to the criteria required in the Standard. Following approval, any subsequent changes to the course are submitted by course sponsors via letter or e-mail and reviewed by NIOSH staff to assure that the changes in faculty or course content continue to meet course requirements.

Course sponsors also voluntarily submit an annual report to inform NIOSH of their class activity level and if any faculty changes have occurred. Applications and materials to be a course sponsor and carry out training are submitted voluntarily by institutions and organizations throughout the country. This is required by NIOSH to evaluate a course to determine whether it meets the criteria in the Standard and whether technicians will be adequately trained as mandated under the Standard. There will be no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs)	Total burden (in hrs)
Initial Application	5	1	210/60	17.5
Annual Report	50	1	45/60	37.5
Report for Course Changes	12	1	45/60	9
Total	67			64

Dated: August 12, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–18917 Filed 8–17–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–04JY]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

Proposed Project

Assessment of Occupational Electric and Magnetic Field (EMF) Exposures—Validation of Interview Procedures used in a Brain Tumor Study against Measurements of Biologically-based Exposure Metrics—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

This study to assess occupational exposures to electric and magnetic fields (EMF) has the following objectives: (1) Validate an interview-based EMF exposure assessment algorithm against measurements of the time-weighted average (TWA) magnetic field magnitude used in previous epidemiologic studies, (2) calibrate the parameters in the algorithm in order to improve the exposure estimates, and (3) determine the correlation between the EMF exposures from the algorithm and biologically-based metrics measured by new instrumentation. These biologically-based metrics consist of either characteristics of the magnetic field that have produced biological effects in laboratory studies or currents in the body resulting from contact with charged surfaces. For the higher correlations with the TWA magnetic field magnitude, these data will be used to determine whether the exposure algorithm can be modified to accurately assess exposures to the biologically-based metrics.

This is a one-time study of workers of an electric utility in Canada and a federal research laboratory in the U.S. There will be no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs)	Total burden (in hrs)
Workers	108	1	15/60	27
Total	108			27

Dated: August 12, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–18922 Filed 8–17–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title:

Improper Payments Best Practices Survey for the TANF Program

Improper Payments Best Practices Survey for the CCDF Program

OMB No.: New collection.

Description: These surveys for the Temporary Assistance for Needy Families (TANF) and the Child Care and Development Fund (CCDF) programs will request that states voluntarily provide information, including how they fefine improper payments in their state, the process used to identify such payments and what actions are taken in the state to reduce or eliminate improper payments. The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) intends to establish a repository for the state submissions which will be available to all states for viewing on an HHS/ACF website. This website will provide information that will help states improve their program integrity system(s) so that improper payments in the programs can be reduced.

Respondents: The 50 States of the United States, the District of Columbia, and the Territories of Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Improper Payments Best Practices Survey for the TANF Program	54	1	24	1,296
Improper Payments Best Practices Survey for the CCDF Program	54	1	24	1,296
Estimated Total Annual Burden Hours				2,592

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 11, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–18839 Filed 8–17–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: 45 CFR Part 95, Section F.

OMB No.: 0992–0005.

Description: The advance planning document (APD) process, established in the rules at 45 CFR Part 95, Subpart F, is the procedure by which states request and obtain approval for Federal financial participation in their cost of acquiring automatic data processing equipment and services. The state agency's submitted APD provides the Department of Health and Human Services (HHS) with the following information necessary to determine the state's need to acquire the requested ADP equipment and/or services:

(1) A statement of need;

(2) A requirements analysis and feasibility study;

(3) A cost benefit analysis;

(4) A proposed activity schedule; and,

(5) A proposed budget.

HHS' determination of a state agency's need to acquire requested ADP equipment or services is authorized at sections 402(a)(5), 452(a)(1), 1902(a)(4) and 1102 of the Social Security Act.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Advance Planning Document	50	1.84	60	5,520
RFP and Contract	50	1.54	1.5	115.5
Emergency Funding Request	27	1	1	27
Service Agreements	14	1	1	14
Biennial Reports	50	1	1.5	75

Estimated Total Annual Burden Hours: 5,751.5

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. e-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, e-mail address: *katherine_t._astrich@omb.eop.gov.*

Dated: August 8, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–18840 Filed 8–17–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Ear, Nose, and Throat Devices Panel and the Dental Products Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Joint meeting of the Ear, Nose, and Throat Devices Panel and the Dental Products Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 6, 2004, from 8 a.m. to 5:30 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, ext. 127, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512522. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss general issues surrounding the prescription use versus over the counter (OTC) use of devices intended to treat snoring or mild to severe obstructive sleep apnea (OSA). The discussion will include the role of the medical/dental provider in the diagnosis, treatment, and followup of snoring and OSA; the ability of the patient to self diagnose and treat OSA; the types of clinical data that would be needed to support an OTC intended use; and the components of adequate device labeling. The discussion will not include continuous positive airway pressure (CPAP) devices and surgical treatments for OSA. Background information, including the attendee list, agenda, and questions for the committee, will be available to the public 1 business day before the meeting, on the Internet at *http://www.fda.gov/cdrh/panelmtg.html.*

Procedure: On October 6, 2004, from 8:30 a.m. to 5:30 p.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written

submissions may be made to the contact person by September 17, 2004. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m. Near the end of the committee discussion, a second 30-minute open public session will be conducted for interested persons to comment further on the discussion topic. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 17, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 6, 2004, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit FDA staff to present to the committee trade secret and/or confidential commercial information relevant to pending and future device submissions for ear, nose, and throat devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 11, 2004.

William K. Hubbard,

Associate Commissioner Policy and Planning.

[FR Doc. 04–18849 Filed 8–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request: Alien Crewman Landing Permit

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Alien Crewman Landing Permit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 18, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Alien Crewman Landing Permit.

OMB Number: 1651–0114.

Form Number: Form CBP–95A and 95B.

Abstract: This collection of information is used by CBP to document conditions and limitations imposed upon an alien crewman applying for benefits under Section 251 of the Immigration and Nationality Act.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 433,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 35,939.

Estimated Total Annualized Cost on the Public: $359,390.

Dated: August 11, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 04–18886 Filed 8–17–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–64]

Notice of Submission of Proposed Information Collection to OMB; Fair Housing Literacy Survey

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Survey to determine the extent of public awareness of the nation's fair housing laws.

DATES: *Comments Due Date:* September 17, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0212) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be

obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Fair Housing Literacy Survey.

OMB Approval Number: 2528–0212.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Survey to determine the extent of public awareness of the nation's fair housing laws.

Frequency of Submission: On occasion, once.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	2,500	0.04		12.5		1,250

Total Estimated Burden Hours: 1,250.

Status: Reinstatement, without change of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 11, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–18864 Filed 8–17–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 4900–C–02C]

FY 2004 SuperNOFA for HUD's Discretionary Programs; Correction and Extension of SHOP NOFA Application Deadline

AGENCY: Office of the Secretary, HUD.

ACTION: Notice: correction and extension of SHOP NOFA application deadline.

SUMMARY: This document makes corrections to a document published in the **Federal Register** on May 14, 2004, concerning HUD's Fiscal Year (FY) 2004 Super Notice of Funding Availability (SuperNOFA). The corrections pertain solely to the Self-Help Homeownership Opportunity Program (SHOP). The corrections are designed to reflect recent statutory amendments to the statute authorizing SHOP. As a result of these changes, HUD is extending the application due date for the SHOP SuperNOFA.

DATES: The application due date for the SHOP SuperNOFA is extended to September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Lou Thompson, Office of Community Planning and Development, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–2470 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 14, 2004 (69 FR 26941), HUD published its Fiscal Year (FY) 2004, Super Notice of Funding Availability (SuperNOFA). On May 28, 2004 (69 FR 30697), June 22, 2004 (69 FR 34878), and July 20, 2004 (69 FR 43427), respectively, HUD published technical corrections for several of the programs included in the SuperNOFA. The June 22, 2004 (69 FR 34878), notice contained specific technical corrections for the Self-Help Homeownership Program (SHOP) section of the FY 2004 SuperNOFA; however, the due date for the funding application did not change. This notice published in today's **Federal Register** further amends the SHOP section of the FY 2004 SuperNOFA. This correction conforms the SHOP NOFA to the Helping Hands for Homeownership Act of 2004 (Pub. L. 108–285, approved August 2, 2004) (Helping Hands Act). The Helping Hands Act amended 11(b)(1) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) (HOPEA), which authorizes SHOP. Specifically, section two of the Helping Hands Act amended paragraph 11(b)(1) of HOPEA by striking "dwelling" and inserting "dwellings." This amendment permits greater flexibility to SHOP grantees by permitting homebuyers to contribute sweat equity to additional dwellings other than their own home. To allow FY2004 applicants to be able to take advantage of the greater flexibility, HUD is correcting the SHOP NOFA to include the new statutory language, and consequently extend the application deadline. For future SHOP competitions, HUD intends to seek public input on the definition of "sweat equity," which may include rulemaking should HUD determine it to be appropriate.

II. Extension of SHOP Application Due Date

The changes affect the thresholds for sweat equity and volunteer labor in the SHOP section of the FY 2004 SuperNOFA. Due to these program changes, it is necessary to extend the SHOP FY 2004 SuperNOFA funding application due date from its original date of July 20, 2004. The new application due date for the SHOP SuperNOFA is September 17, 2004.

This extension will permit organizations that could not meet the prior requirements, and therefore did not apply, or those whose applications were not submitted by the July 20, 2004, application deadline, an opportunity to still apply for FY 2004 SHOP funding. Applicants that met the July 20, 2004, application deadline will have an opportunity to revise their applications if they so choose. If an applicant does not submit a new application or revisions to its previously submitted application, HUD will review the previously submitted application. Applicants may submit a totally new application or they have the option of

submitting only the section or sections affected by these changes. For example, if a change is made in rating factor 3, the entire rating factor 3 must be submitted. HUD will only accept an entire section or sections to the revised application. HUD will not accept parts of a section, individual pages, or paragraphs. This limitation is to ensure that no information is omitted. A transmittal letter identifying the pages and sections changed must be signed by the same person that signed the SF–424.

Accordingly, this document makes the following corrections:

Self-Help Homeownership Opportunity Program (SHOP) Eligibility Information

On page 27362 of the May 14, 2004, SuperNOFA under section III.C.2. captioned "Threshold Requirements," HUD corrects section III.C.2.e. to read as follows:

e. Your program must require homebuyers to contribute a minimum of 100 hours of sweat equity toward the construction or rehabilitation of their own homes and/or the homes of other homebuyers participating in the self-help housing program. However, in the case of a household with only one adult, the requirement is 50 hours of sweat equity. This includes training for construction on the dwelling units, but excludes homebuyer counseling and home maintenance training. Reasonable accommodation must be permitted in the provision of sweat equity for persons with disabilities.

On page 27362 of the May 14, 2004, SuperNOFA under section III.C.2 captioned "Threshold Requirements," HUD corrects section III.C.2.f. to read as follows:

f. Your program must involve community participation in which volunteers assist in the construction of dwellings. Volunteer labor is work performed by an individual without promise, expectation or compensation for the work rendered. For mutual self-help housing programs that are assisted by USDA Rural Development under section 523 of the Housing Act of 1949 (7 CFR Part 1944, Subpart I) or which have a program design similar to the section 523 program, the work by each participating family on other participating families' homes may count as volunteer labor. A mutual self-help housing program generally involves 4 to 10 participating families organized in a group to use their own labor to reduce the total construction cost of their homes and complete construction work on their homes by an exchange of labor with one another.

Dated: August 10, 2004.

Nelson Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 04–18862 Filed 8–17–04; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

[CA–160–1220–PG]

Carrizo Plain National Monument Advisory Committee; Renewal Notice

AGENCY: Bureau of Land Management (BLM), California State Office.

ACTION: Carrizo Plain National Monument Advisory Committee—Notice of Renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's Carrizo Plain National Monument Advisory Committee.

The purpose of the Committee is to provide advice and counsel to the Bureau of Land Management, through the Carrizo Plain National Monument Manager, with respect to the revision and implementation of the comprehensive plan developed in accordance with the Federal Land Policy and Management Act of 1976.

FOR FURTHER INFORMATION CONTACT: Alden Boetsch, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, NW., Room 406 LS, Washington, DC 20036, telephone (202) 452–5165.

Certification Statement

I hereby certify that the renewal of the Carrizo Plain National Monument Advisory Committee is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: August 2, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–18860 Filed 8–17–04; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Restoration Plan and Environmental Assessment for the Certus, Inc. Chemical Spill Natural Resource Damage Assessment in Tazewell County, VA

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI) and the Commonwealth of Virginia (jointly referred to as the Trustees), announces the release of the Final Restoration Plan and Environmental Assessment (RP/EA) for the Certus, Inc. Chemical Spill Natural Resource Damage Assessment in Tazewell County, Virginia. The final RP/EA describes the Trustees' proposal to restore natural resources injured as a result of a release of hazardous substances.

DATES: August 15, 2004.

ADDRESSES: Requests for copies of the final RP/EA may be made to: U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

FOR FURTHER INFORMATION CONTACT: John Schmerfeld, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call 804–693–6694, extension 107, for further information.

SUPPLEMENTARY INFORMATION: On August 27, 1998, a tanker truck overturned on U.S. Route 460 in Tazewell County, Virginia. The truck released approximately 1,350 gallons of Octocure 554-revised, a rubber accelerant, into an unnamed tributary about 530 feet from its confluence with the Clinch River. The spill turned the river a snowy white color and caused a significant fish kill. The spill also killed most aquatic benthic invertebrates for about 7 miles downstream and destroyed one of the last two known remaining reproducing populations of the endangered tan riffleshell mussel. A consent decree was entered with the U.S. District Court for the Western District of Virginia, Abingdon Division, by the United States and Certus, Inc. on April 7, 2003, to address natural resource damages resulting from the 1998 release. The consent decree stipulates that settlement funds are to be "* * * managed by the DOI for the joint benefit and use of the Federal and State Trustees to plan, perform, monitor and oversee native,

freshwater mussel restoration projects within the Clinch River watershed * * *"

Under the authority of the Comprehensive Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 et. seq., "natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages." Natural resource damage assessments (NRDA) are separate from the cleanup actions undertaken at a hazardous waste or spill site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. The natural resource damage assessment process seeks to: (1) Determine whether injury to, or loss of, trust resources has occurred; (2) ascertain the magnitude of the injury or loss; (3) calculate the appropriate compensation for the injury, including the cost of restoration; and (4) develop a restoration plan that will restore, rehabilitate, replace, and/or acquire equivalent resources for those resources that were injured or lost.

This final RP/EA has been developed by the Trustees in order to address and evaluate restoration alternatives related to natural resource injuries within the Clinch River watershed. The purpose of this RP/EA is to implement restoration actions that will restore, rehabilitate, replace, and/or acquire natural resources and the services provided by those resources that approximate those injured as a result of the spill using funds collected as natural resource damages for injuries, pursuant to the CERCLA. This final RP/EA describes the affected environment, identifies potential restoration alternatives and their plausible environmental consequences, and describes the proposed preferred alternative.

Section 111(i) of the CERCLA requires natural resource trustees to develop a restoration plan prior to allocating recoveries to implement restoration actions, and to obtain public comment on that plan. Under the National Environmental Policy Act (NEPA), Federal agencies must identify and evaluate environmental impacts that may result from Federal actions. This final RP/EA has integrated CERCLA and NEPA requirements by summarizing the affected environment, describing the purpose and need for action, and selecting and describing the preferred restoration activities and including public comment.

This final RP/EA will be available to interested members of the public, natural resource Trustees, other affected Federal or State agencies or Native American tribes upon request.

Author: The primary author of this notice is John Schmerfeld, U.S. Fish & Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, commonly known as Superfund (42 U.S.C. 9601 *et seq.*), and the NRDA Regulations found at 43 CFR, part 11.

Dated: August 11, 2004.

Thomas J. Healy,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service, Department of the Interior, Designated Authorized Official.

[FR Doc. 04–18918 Filed 8–17–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–74668; 4–08808]

Public Land Order No. 7613; Withdrawal of Public Land for the United States Air Force; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 40 acres of public land from surface entry and mining, for a period of 20 years, for the United States Air Force to protect a runway safe zone at the Nellis Air Force Base.

DATES: Effective August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 775–861–6532.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (2000)), for the United States Air Force to protect a runway safe zone at the Nellis Air Force Base:

Mount Diablo Meridian

T. 19 S., R. 62 E.,
Sec. 35, SE¼SW¼

The area described contains 40 acres in Clark County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: August 2, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–18859 Filed 8–17–04; 8:45 am]

BILLING CODE 4310–HC–M

DEPARMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1220–BY; WYW 34993]

Public Land Order No. 7612; Extension of Public Land Order No. 6578; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends Public Land Order No. 6578 for an additional 20-year period. This extension is necessary to continue the protection of the Castle Gardens Recreation Area in Washakie County.

DATES: Effective November 23, 2004.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 6578 (49 FR 46144, November 23, 1984), which withdrew 110 acres of public land from surface entry and mining to protect the Bureau of Land Management Castle Gardens Recreation Area, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6578 will expire on November 22, 2024, unless, as a result of a review conducted prior to the expiration date pursuant to Section

204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: August 2, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–18838 Filed 8–17–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0095).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. We changed the title of this information collection request (ICR) to clarify the regulatory language we are covering under 30 CFR Part 206. The previous title of this ICR was "Request to Exceed Regulatory Allowance Limitation." The new title of this ICR is "30 CFR Part 206—Product Valuation (Request to Exceed Transportation and Processing Allowance Limitation), Subpart B—Indian Oil, § 206.54(b)(2); Subpart C—Federal Oil, § 206.109(c)(2); Subpart D—Federal Gas, § § 206.156(c)(3), 206.158(c)(3), and 206.158(d)(2)(i); and Subpart E—Indian Gas, § § 206.177(c)(2) and 206.177(c)(3)."

DATES: Submit written comments on or before October 18, 2004.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206—Product Valuation (Request to Exceed Transportation and Processing Allowance Limitation), Subpart B—Indian Oil, § 206.54(b)(2); Subpart C—Federal Oil, § 206.109(c)(2); Subpart D—Federal Gas, § § 206.156(c)(3), 206.158(c)(3), and 206.158(d)(2)(i); and Subpart E—Indian Gas, § § 206.177(c)(2) and 206.177(c)(3).

OMB Control Number: 1010–0095.

Bureau Form Number: Form MMS–4393.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws.

The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's Indian trust responsibility. Applicable citations of the laws pertaining to mineral leases include 5 U.S.C. 301, *et seq.*; 25 U.S.C. 396a, *et seq.*, 2101, *et seq.*; 30 U.S.C. 185, 351, *et seq.*, 1001, *et seq.*, 1701, *et seq.*; 31 U.S.C. 9701; and 43 U.S.C. 1301, *et seq.*, 1331, *et seq.*, and 1801, *et seq.*

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are paid appropriately.

Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected. A response is required to obtain the benefit of exceeding a regulatory allowance limitation.

Under certain circumstances, lessees are authorized to deduct from royalty payments the reasonable actual costs of transporting the royalty portion of produced oil and gas from the lease to a processing or sales point not in the immediate lease area. When gas is processed for the recovery of gas plant products, lessees may claim a processing allowance. Transportation and processing allowances are a part of the product valuation process that MMS uses to determine if the lessee is reporting and paying the proper royalty amount.

To request permission to exceed an allowance limit, royalty payors must write a letter to MMS explaining why a higher allowance limit is necessary and provide supporting documentation. The MMS developed Form MMS–4393, Request to Exceed Regulatory Allowance Limitation, to accompany the payor's letter requesting approval to exceed the allowance limit. The form provides MMS the data necessary to make a decision on the request and track deductions on royalty reports. Data reported on Form MMS–4393 is also subject to subsequent audit and adjustment.

Frequency of Response: Annually.

Estimated Number and Description of Respondents: 26 lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 121 hours.

Since the previous renewal of this ICR, we have obtained more accurate estimates of the number of respondents and the time required to provide the information requested, and we have adjusted the burden hours accordingly. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR section	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	Subpart B—Indian Oil (Transportation Allowances)			
206.54(b)(2)	* * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination. * * *	4.25	1	4.25
	Subpart C—Federal Oil (Transportation Allowances)			
206.109(c)(2)	Limits on transportation allowances. * * * You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. * * * Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation for MMS to make a determination. * * *	4.25	1	4.25
	Subpart D—Federal Gas (Transportation Allowances)			
206.156(c)(3)	* * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination. * * *	4.25	2	8.5
	Subpart D—Federal Gas (Processing Allowances)			
206.158(c)(3)	Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation for MMS to make a determination. * * *	4.25	19	80.75
206.158(d)(2)(i)	If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs which shall be in addition to any other processing allowance. * * *	9.5	2	19
	Subpart E—Indian Gas (Transportation Allowances)			
206.177(c)(2)	If you ask MMS, MMS may approve a transportation allowance deduction in excess of the limitation in paragraph (c)(1) of this section. * * *	4.25	1	4.25
206.177(c)(3)	Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination.	*See* 206.177(c)(2)		
Total burden			26	121

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *."

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and

software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: August 12, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 04–18963 Filed 8–17–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agua Fria Linear Recharge Project, Maricopa County, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) plans to prepare an EIS on the Agua Fria Linear Recharge Project. Reclamation is authorized to participate in this project with the Sub-Regional Operating Group (SROG), a partnership formed by the cities of Glendale, Mesa, Phoenix, Scottsdale, and Tempe, pursuant to Section 1608 of Public Law 102–575, Title XVI "Reclamation Wastewater and Groundwater Study and Facilities Act," passed by Congress in 1992. The Agua Fria Linear Recharge Project consists of transporting reclaimed water from the 91st Avenue Wastewater Treatment Plant (WWTP) located adjacent to the Salt River at 91st Avenue in Phoenix, Arizona, to a 10-mile recharge area along the channel of the Agua Fria River, in central Maricopa County. SROG collectively owns the 91st Avenue WWTP.

As lead Federal agency for this project, Reclamation is initiating public scoping for the EIS and will be conducting scoping meetings pursuant to section 102(2)(C) of NEPA. Two public scoping meetings will be held to receive comments from the general public on the environmental impacts, concerns, and issues that should be addressed in the EIS.

DATES: To ensure consideration in the preparation of the draft EIS, written comments must be received by October 6, 2004.

The public scoping meeting dates are:

(1) September 21, 2004, 6:30 p.m., Avondale, AZ.

(2) September 22, 2004, 4 p.m., Surprise, AZ.

ADDRESSES: Written comments should be sent to Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; or by faxogram (602) 216–4006.

The public scoping meeting locations are:

(1) Estrella Community College, Community Room, 3000 North Dysart Road, Avondale, AZ.

(2) West Valley Arts Museum, 17420 North Avenue of the Arts, Surprise, AZ.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Eto, at (602) 216–3857, or at the above address.

SUPPLEMENTARY INFORMATION: Section 1608 of Public Law 102–575, Title XVI, provides Reclamation with the authority to participate in the Agua Fria Linear Recharge Project as a Federal sponsor. SROG is the local sponsor for the project. The SROG partners each share wastewater treatment capacity at the 91st Avenue WWTP in Phoenix, Arizona.

The Agua Fria Linear Recharge Project would transport reclaimed water from the 91st Avenue WWTP to different points within a 10-mile recharge area along the Agua Fria River channel between Bell Road and Indian School Road. An estimated 60,000 acre-feet per year of reclaimed water would be available for recharge in the future. Once released into the Agua Fria River, the quality of the reclaimed water would be improved through natural soil aquifer treatment processes as it is recharged into the groundwater aquifer. Credits accrued from the Agua Fria Linear Recharge Project would be recovered by the SROG cities at a later time within each city's respective water service area.

Currently, SROG and Reclamation are evaluating whether to pipe the reclaimed water directly from the WWTP or after it passes through the Tres Rios wetlands, a joint project of the U.S. Army Corps of Engineers and the City of Phoenix consisting of a series of wetlands that are to be constructed downstream of the WWTP in late 2008. Reclamation and SROG are also studying different pipeline routes to convey the reclaimed water for release into the Agua Fria riverbed. Recharge berms, dikes, and other features within the river channel are being considered as a means of enhancing recharge of this water. Opportunities are also being considered for supporting limited habitat restoration and enhancement activities along the Agua Fria River corridor and recreational/educational facilities within the river corridor, subject to existing and known future planning constraints within the project area. Additional information on the Agua Fria Linear Recharge Project can be found at the following internet site: *http://www.phoenix.gov/AGUAFRIA/.*

Currently, the following issues and concerns have been identified for consideration in the EIS: Biological and

cultural resource impacts, potential bird air strike hazards at nearby airports, air pollution, sediment transport within the Agua Fria River, hydrologic impacts, groundwater quantity and quality, public health and safety, aesthetics, transportation and utilities impacts, construction noise, socioeconomic concerns, and land use impacts.

Written comments received by Reclamation become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

If you would like to be placed on the mailing list to receive future information or a copy of the draft EIS when it becomes available, please contact Ms. Sandra Eto (see **FOR FURTHER INFORMATION CONTACT,** above).

Note: Hearing impaired, visually impaired, and/or mobility impaired persons planning to attend a public scoping meeting may arrange for necessary accommodations by calling Frank Turek, PBS&J, at (602)943–1003 (extension 110), or faxogram (602) 943–1303, no later than September 3, 2004.

Dated: August 2, 2004.

Robert W. Johnson,

Regional Director, Lower Colorado Region.

[FR Doc. 04–18841 Filed 8–17–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on July 27, 2004, a proposed Consent Decree in *United States and State of Ohio* v. *City of Cambridge,* Civil Action No. 01–10604, was lodged with the United States District Court for the Southern District of Ohio.

This Consent Decree resolves specified claims against the City of Cambridge under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as set forth in the Complaint filed by the United States on October 30, 2001. Cambridge owns and operates a publicly-owned wastewater treatment works ("POTW"), and it discharges effluent from the POTW through an outfall into Wills Creek, a navigable water of the United States. Cambridge also disposes of sewage sludge from the POTW through land application.

The proposed consent decree (CD) requires the City of Cambridge to complete the following: (1) Identify and remove any sewer cross connection existing in its collection system within 120 days of entry of the CD; (2) implement several flow reduction projects by December 2005; (3) implement several pump station improvement projects by January 2007; (4) complete the necessary renovations to its plant sludge digesters within 180 days of entry of the CD; (5) update its operations and maintenance manual within thirty days of entry of the CD; (6) develop a sewer overflow action plan within thirty days of entry of the CD; and (7) evaluate its collection system one year after implementation of all the proposed consent decree work relating to both the flow reduction projects and the pump station improvements to see if the City's treatment works facility and collection system is still sustaining excessive infiltration/inflow ("I/I"); and if excessive I/I was discovered, submit a work plan to the governmental agencies detailing what it will do to remove any excess I/I found. The proposed consent decree also obligates the City of Cambridge to pay civil penalties totaling $70,000, which is to be split equally between the United States and the State of Ohio.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Ohio* v. *City of Cambridge,* D.J. Ref. 90–5–1–1–06501.

The proposed consent decree may be examined at U.S. EPA Region V, 77 West Jackson Blvd, Chicago, IL 60604–3590. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the proposed consent decree, please enclose a check in the amount of $16.00, payable to the U.S. Treasury, for reproduction costs.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–18943 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in *In Re Kaiser Aluminum Corporation* Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on August 13, 2004, a proposed Consent Decree was lodged with the United States Bankruptcy Court for the District of Delaware in *In re Kaiser Aluminum Corp., et al.,* No. 02–10429. The Consent Decree among the United States on behalf of the Environmental Protection Agency, the State of Washington, and Debtor Kaiser Aluminum Corporation and certain of its Debtor affiliates, including Kaiser Aluminum & Chemical Corporation, resolves CERCLA claims relating to property owned by the Debtors in Mead, Washington and has provisions relating to Debtors' CERCLA liability for the Mead Aluminum Reduction Works facility and other nearby property. Under the Consent Decree, Debtors will convey property they own to a Custodial Trust that will undertake needed response action at the Site. Debtors will provide $2,250,000 in funding for the Trust and an $18 million dollar insurance policy that will cover certain work at the Site.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Kaiser Aluminum Corporation, et al.,* DJ Ref. No. 90–11–3–07769/1. Commenters may request an opportunity for a public

meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE, and at the Region 10 Office of the United States Environmental Protection Agency, 1200 Sixth Ave., Seattle, WA 98101. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $26.00 (25 cents per page reproduction cost) payable to the U.S. Treasury for the entire Consent Decree and attachments or the amount of $9.75 for the Consent Decree without attachments.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–18939 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on August 5, 2004, a proposed Settlement Agreement and Final Order ("Settlement Agreement") in *United States and State of California* ex rel. *California Regional Water Quality Control Board, Los Angeles Region* v. *City of Los Angeles*, Civil Action No. 01–191–RSWL, was lodged with the United States District Court for the Central District of California, Western Division. The United States and the State's action is consolidated with *Santa Monica Baykeeper* v. *The City of Los Angeles*, Civil Action No. 98–9039–RSWL.

The United States and the State's action sought injunctive relief and a civil penalty to address sanitary sewer overflows and other violations of the Clean Water Act and the City of Los Angeles's National Pollutant Discharge Elimination System ("NPDES") permits. Under the Settlement Agreement, the City will (i) begin work on specific projects to increase the sewer system's capacity and submit a report in two years recommending additional capacity projects necessary to assure that the sewer system has sufficient capacity to convey wet weather flows, and (ii) begin work on the rehabilitation and replacement of the sewer pipes in poor condition and submit a report in two years recommending what further rehabilitation and replacement work is necessary (the report must recommend at least the rehabilitation and replacement of 60 miles of pipe per year on a three-year rolling average and 50 miles of pipe per year). Under the Settlement Agreement, the City must also (iii) clean approximately 2,800 miles of pipe on a three-year rolling average, (iv) inspect all restaurants each year and review, and where necessary, improve the City's enforcement of its ordinance regulating the discharge of grease from restaurants, (v) address sewer odors, and (vi) inspect at least 600 miles of pipe annually with closed circuit TV.

The City will pay a cash penalty to the United States of $800,000 and make a payment of $800,000 to the State to resolve the State's civil penalty claims. The State has elected to devote its $800,000 penalty to supplemental environmental projects ("SEPs"). The Settlement Agreement requires the City to spend an additional $7.7 million on SEPs, bringing the total devoted to SEPs to $8.5 million. The Settlement Agreement contains a list of possible SEPs, most of which are wetland and stream restoration projects, located primarily along the Los Angeles River, that are designed to restore aquatic areas and provide water quality benefits by treating local runoff.

The United States Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Los Angeles*, D.J. Ref. No. 90–5–1–1–809/1.

The Settlement Agreement may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the Settlement Agreement may also be obtained by mail from the Settlement Agreement Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Settlement Agreement Library, please enclose a check in the amount of $21.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–18946 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on August 3, 2004, a proposed consent decree in *United States* v. *Mobile Exploration and Producing U.S. Inc.*, Case No. 2:98–DV–00220–ST, was lodged with the United States District Court for the District of Utah.

In this action, the United States sought injunctive relief and civil penalties under Sections 309 and 311 of the Clean Water Act ("CWA") against Mobil at its McElmo Creek Unit and Ratherford Unit near Aneth, Utah, for unpermitted discharges of produced water and oil into waters of the United States, failure to prepare and implement an adequate Spill Prevention, Control, and Countermeasure Plan, failure to provide notification of an oil spill, and failure to prepare and implement a Facility Response Plan. The consent decree requires Mobil to: (1) Install new equipment and implement measures to prevent spills and minimize the volume of future spills, (2) implement a supplemental environmental project to extend a water line to provide drinking water to local residents, and (3) pay a civil penalty of $515,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 with a copy to Robert Mullaney, U.S. Department of Justice, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to *United States* v. *Mobil Exploration and Producing U.S. Inc.*, D.J. Ref. #90–5–1–1–4457.

The consent decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–18947 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Under 28 CFR 50.7, notice is hereby given that on August 11, 2004, a proposed consent decree in *City of San Bernardino Municipal Water Department* v. *United States of America, Department of the Army* (C.D. Cal.) and *State of California, on behalf of the Department of Toxic Substances Control* v. *United States of America, Department of the Army* (C.D. Cal.) Civil Actopm Nos. CV 96–8867 and CV 96–5205 (consolidated), was lodged with the United States District Court for the Central District of California.

The Decree addresses the cleanup of groundwater contamination at the Newmark Groundwater Contamination Superfund Site ("Newmark Site") in San Bernardino, California. The Decree would resolve the cost recovery claims by the Plaintiffs City of San Bernardino and State of California against the United States, as well as the United States' potential claims against the City of San Bernardino for response costs and cleanup related to the Newmark Site.

The Environmental Protection Agency ("EPA"), Region IX, has been conducting a fund-lead cleanup at the Newmark Site since 1989. The proposed settlement provides for the completion of the construction of groundwater extraction and treatment facilities for the Muscoy Operable Unit at the Newmark Site, 50 years of operation and maintenance of both the Muscoy and the Newmark Operable Units, and Site-wide monitoring.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, with a copy to Cynthia Huber, Senior Attorney, General Litigation Section, Environment and Natural Resources Division, U.S. Dept. of Justice, P.O. Box 663, Washington, DC 20044, and should refer to *City of San Bernardino Municipal Water Department* v. *United States of America, Department of the Army* (C.D. Cal.), D.J. Ref. #90–11–3–06902/1.

The consent decree may be examined at the Office of the United States Attorney, Central District of California, Civil Division, 300 North Los Angeles Street, Los Angeles, California 90012, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $83.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–18938 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a consent decree in *United States* v. *Stone Container Corporation,* Civil Action No. 3:04CV552 (REP) (E.D.Va.) was lodged with the court on August 5, 2004.

The proposed decree resolves the claims of the United States and intervener Virginia Department of Environmental Quality against Stone Container Corporation under the Clean Air Act, 42 U.S.C. 7401, *et seq.*, for civil penalties and injunctive relief to redress violations occurring at Stone's Hopewell, Virginia Kraft Pulp Paper Mill. Under the decree, Stone is required to pay a civil penalty of $835,000. Stone has remedied the violations at issue.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Stone Container Corporation,* Civil Action No. 3:04CV552 (REP) (E.D.Va.), DOJ Ref. #90–5–2–1–06526.

The consent decree may be examined at the Office of the United States Attorney, Jamieson Avenue, Alexandria, VA 22314 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* During the public comment period, a copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5,00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–18941 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on August 4, 2004, a proposed Settlement Agreement in In re BII Liquidation, Inc., (f/k/a Burlington Industries, Inc.) No. 01–11282 (RJN) (jointly administered) was lodged with the United States Bankruptcy Court for the District of Delaware.

In this action, the United States sought the recovery of responses costs associated with four sites; the Carolina Steel Drum Site, York County, South Carolina; the Industrial Pollution Control Superfund Site ("IPC" site) Hinds County Mississippi; the J Street Site, Harnett County, North Carolina, and the FCX Statesville Site, Iredell County, North Carolina (Operable Unit 1). The Settlement Agreement provides that the claims of the United States Environmental Protection Agency for response costs at those sites will be treated as general unsecured claims in the following amounts: At the IPC site—$5,000; at the J Street Site—$160,038.50 and the FCX Statesville Site, Operable Unit 1—$665,381.32. The claims of the United States at the Carolina Drum Site are withdrawn. With respect to the IPC, J Street Site, and FCX Statesville Site claims, the United States waives and releases any other environmental claims it might have at these sites except for, among others, natural resource damage claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to In Re BII Liquidation, Inc., (f/k/a Burlington Industries, Inc.), D.J. Ref. 90–11–3–0787.

The Settlement Agreement may be examined at the Office of the United States Attorney, for the Northern District of Georgia, 600 U.S. Courthouse, 75 Spring Street, SW., Atlanta 30303–3309, and at U.S. EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–18944 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on or about July 21, 2004, a proposed Settlement Agreement in *In re: Franklin Environmental Services, Inc.*, Case No. 02–17897–CJK, was filed pursuant to Fed. R. Bank. Proc. 9019 with the United States Bankruptcy Court for the District of Massachusetts, Eastern Division.

The proposed Settlement Agreement resolves a claim asserted in this Chapter 11 bankruptcy proceeding by the United States on behalf of the United States Environmental Protection Agency ("EPA") for reimbursement of response costs incurred or to be incurred by EPA at the Beede Waste Oil Superfund Site ("Beede Site"), located in Plaistow, New Hampshire, from Franklin Environmental Services, Inc. ("Franklin"). The United States alleged Franklin was liable as a transporter under section 107(a)(4) of CERCLA, 42 U.S.C. 9606(a)(4).

The United States and Franklin have agreed under the Settlement Agreement that the United States' claim shall be allowed as an Unsecured Claim in the amount of $346,737.17, and paid as a Class 3 Unsecured Claim without discrimination in accordance with the terms of the Bankruptcy Plan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re: Franklin Environmental Services, Inc.*, Case No. 02–17897–CJK, D.J. Ref. # 90–11–3–07039/6.

The Settlement Agreement may be examined at the Office of the United States Attorney, United States Courthouse, One Courthouse Way, Boston, MA 02210, and at U.S. EPA New England—Region One, One Congress Street, Suite 1100, Boston, MA 02114–2023. During the public comment period, the Settlement Agreement, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–18945 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Modification of Final Judgment

Notice is hereby given that Defendants, SBC Communications Inc. ("SBC") and BellSouth Corporation ("BellSouth"), and Plaintiff, United States, have filed a joint motion to modify the Final Judgment in *United States* v. *SBC Communications Inc. and BellSouth Corporation*, Civil No. 1:00CV02073, with the United States District Court for the District of Columbia, and that the Department of Justice, in a stipulation also filed with the Court, has tentatively consented to modification of the Final Judgment if certain conditions are met, and has reserved the right to withdraw its consent pending receipt of public comments.

On August 30, 2000, the United States filed a complaint in this case alleging that the proposed joint venture between SBC and BellSouth, to form Cingular Wireless LLC ("Cingular"), would substantially lessen competition in wireless mobile telephone service in

certain areas in California, Indiana, and Louisiana. On December 29, 2000, a Final Judgment was entered with the consent of the Defendants which required them to make certain divestitures of licenses and assets in relevant markets for mobile wireless telecommunications services in California, Indiana, and Louisiana. The Final Judgment bars the defendants from reacquiring any of the divested spectrum licenses for the term of the decree, which expires December 29, 2010. On February 17, 2004, Cingular announced an agreement to acquire AT&T Wireless Services Inc. ("AT&T Wireless", which purchased the divested licenses in California and Indiana. Due to changes in competitive conditions in the affected geographic areas, the United States believes that the Final Judgment's prohibition on reacquiring these spectrum licenses is no longer necessary to preserve competition in these affected areas. The modification would allow the defendants to reacquire the divested spectrum licenses in the Los Angeles MSA and in the Indianapolis MTA. Reacquisition of the divested spectrum licenses in 5 BTAs within the Indianapolis MTA is conditioned upon Cingular not acquiring control of or an interest in certain other spectrum licenses in those BTAs as part of its acquisition of AT&T Wireless.

The Department has filed with the Court a memorandum setting forth the reasons why the United States believes that modification of the Final Judgment would serve the public interest. Copies of the joint motion papers, the stipulation containing the United States's tentative consent, the United States's memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection at the Antitrust Documents Group, Antitrust Division, Liberty Place Building, Room 215, 325 7th Street, NW., Washington, DC 20530 (202–514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed modification of the Final Judgment to the United States. Such comments must be received by the Antitrust Division within thirty (30) days and will be filed with the Court by the United States. Comments should be addressed to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202–514–5621).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

[FR Doc. 04–18855 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Dialkyl Project

Notice is hereby given that, on July 16, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Dialkyl Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the objectives of the Third Revised and Restated Agreememt Among Members of the Dialkyl Project are to revise the membership and administration of the Project and to set new conditions for termination of the Project. Huntington Laboratories, Huntington, IN is no longer a member. The conditions for termination having been met, the Dialkyl Project is terminated and only certain provisions remain including, *inter alia*, those relating to data compensation, liability, confidentiality and administrative matters.

No other changes have been made in either the membership or planned activity of the group research project.

On August 3, 1988, the Dialkyl Project filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 25, 1988 (53 FR 32480).

The last notification was filed with the Department on May 15, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 5, 1996 (61 FR 28596).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–18857 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research And Production Act of 1993—Joint Venture Under ATP Award No. 70NANB4H3027

Notice is hereby given that, on July 19, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Joint Venture Under ATP Award No. 70NANB4H3027 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are The POM Group, Inc., Auburn Hills, MI; Nuvonyx Inc., Bridgeton, MO; and Stellite Coatings, Goshen, IN. The nature and objectives of the venture are to develop and demonstrate high speed, ultra-precision Direct Metal Deposition (DMD) technology for tool and die manufacturing, which creates metal alloys with unique and controlled mechanical properties. This technology will be incorporated with a high power fiber-coupled diode laser power source and a Dry EDM final finishing process. The activities of this Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–18858 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—NuStart Energy Development, LLC

Notice is hereby given that, on July 19, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), NuStart Energy Development, LLC has filed written notifications simultaneously with the

Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Southern Company Services, Birmingham, AL; EDF International North America, Inc., Washington, DC; Entergy Nuclear, Inc., Jackson, MS; Exelon Generation Company, LLC, Kennett Square, PA; Constellation Generation Company, LLC, Baltimore, MD; Duke Energy Corporation, Charlotte, NC; Progress Energy Service Company, LLC, Raleigh, NC; and Florida Power & Light Company, Juno Beach, FL. The venture has entered into certain contractual undertakings separately with Westinghouse Electric Company, Monroeville, PA and with General Electric Company, Fairfield, CT. Westinghouse Electric Company is wholly owned by British Nuclear Fuels plc, an English company. The nature and objectives of the venture are to submit a proposal to the United States Department of Energy's Solicitation DE–PS07–04ID–14435, and if the proposal is accepted, implement it. This Solicitation seeks proposals for a combined operating license demonstration, pursuant to 10 CFR, Part 52, Subpart C. Implementation of the proposal, if accepted, will require negotiating, entering into and implementing an agreement ("Agreement") with the Department of Energy consistent with the proposal, and other contracts, subcontracts and actions as appropriate to implement the Agreement.

Membership in this venture remains open, and NuStart Energy Development, LLC will file additional written notification disclosing any changes in membership.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–18856 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on July 20, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Micronics Japan Co., Ltd., Tokyo, Japan has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On May 27,2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on April 28, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 28, 2004 (69 FR 30722).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–18868 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Telemanagement Forum

Notice is hereby given that, on June 24, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Telemanagement Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Globetom, Lyttelton, South Africa; Zvolve Systems, Inc., Duluth, GA; Econet Wireless Nigeria, Victoria Island, Lagos, Nigeria; Connexion By Boeing, Irvine, CA; Telus, Edmonton, Alberta, Canada; Flexiton KFT., Budapest, Hungary; Powerise Software Research of Lanzhou University, Lanzhou, Gansu, People's Republic of China; Aprisma Management Technologies, Portsmouth, NH; China Mobile Communications Corporation, Beijing, People's Republic of China; Datanomic Limited, Cambridge, United Kingdom; European Technical Support Limited, Dorkins, Surrey, United Kingdom; Evans Griffiths & Hart, Inc., Lexington, MA; Vidus Limited, Ipswich, Suffolk, United Kingdom; Inoss, Inc., Austin, TX; Grupo Auna Barcelona, Spain; Hammerhead Systems, Inc., Mountain View, CA; Covad Communications, San Jose, CA; Xenicom Ltd., Bristol, United Kingdom; Primal Solutions, Inc., Irvine CA; Consitel, Moscow, Russia; Edynamic, Inc., Dallas, TX; Ramax International, St. Petersburg, Russia; Marand D.O.O., Ljubljana, Slovenia; Expertedgc Software & Systems Limited, Lagos, Nigeria; Tno Telecom, 2600 GB Delft, The Netherlands; Centre of Software Engineering-CSE, Hanoi, Vietnam; Asidua Limited, Belfast, United Kingdom; Jordan Telecom, Amman, Jordan; Equant, Valbonne, France; Sycamore Networks, Inc., Chelmsford, MA; Anseres Consulting & Projectmanagement, Rendsburg, Germany; Telecom Consultants-TCOVA, Kerava, Finland; Pystechnics, Ipswich, Suffolk, United Kingdom; Aran Technologies, Ltd., Blackrock Co., Dublin, Ireland; IBB Consulting Group, New Hope, PA; Iceland Telecom, Ltd., Reykjavik, Iceland; Telchemy, Incorporated, Suwanee, GA; Mapinfo, Windsor, Berkshire, United Kingdom; Cable & Wireless, Bracknell, Berks, United Kingdom; 4DH Consulting, Reading, United Kingdom; Fsue Loniis, St. Petersburg, Russia; Elisa Corporation, Fin, Finland; Kingston Communications (Hull) PLC, Wakefield, West Yorkshire, United Kingdom; University of Southampton, Southampton, Hampshire, United Kingdom; Nexus Telecom AG, Hombrechtikon, Switzerland; CTI-Ipsoft, Moscow, Russia; QT Training, Ltd., Macclesfield, United Kingdom; Micro Research, Sa, Namur, Belgium; China Netcom Group Labs, Haidian District, Beijing, People's Republic of China; Networking Technology Laboratory, Budapest, Hungary; Ascom Deutschland, GMBH, Systems & Solutions, Aachen, Germany; Etesian GMBH, Holzkirchen, Germany; Embratel-Empresa Brasileira De Telecomunicacoes, Rio De Janiero, RJ, Brazil; Polynetics BV, Hendrick Ido

Ambacht, DA, The Netherlands; Neoconsult APS, Friederiksberg, Denmark; Cell Vision, No–1234, Lysaker, Norway; Integral Access, Inc., Chelmsford, MA; Institut National Des Telecommunications, Evry, France; James Madison University, Harrisonburg, VA; Aliant, Inc., Saint John, New Brunswick, Canada; Cognizant Technology Solutions Corporation, Teaneck, NJ; Unisys Austria, Vienna, Austria; ITS-Telecom Systems Group, Dubai Internet City, Dubai, United Arab Emirates; Telekomunikacja Polska SA, Warszawa, Poland; Mobile Tornado, Ltd., Mougins, France; CanTV, Negocios de Cantv, Edificio Cortijos, Venezuela; Antic Seilor Rosch, Oldham, United Kingdom; N Tels Co., Ltd., Short Hills, NJ; Boc Iberica, Madrid, Spain; Inet Technologies, Inc., Richardson, TX; EXIS I.T., Athens, Greece; FBS, Ipswich, Suffolk, United Kingdom; and Telekom Slovenije, Ljubljana, Slovenia have been added as parties to this venture.

The following members have changed their names: A.P. Solve Limited has changed its name to Vidus Limited, Ipswich, Suffolk, United Kingdom; Antel has changed its name to Antel-Uruguay, Montevideo, Uruguay; BTEXACT Technologies has changed its name to BT Group PLC, London, United Kingdom; CH2M Hill Communications has changed its name to Equador, Richmond, Surrey, United Kingdom; Convergys Corporation has changed its name to Convergys, Cambridge, Cambridgeshire, United Kingdom; Divristi Telkom has changed its name to Telkom R&D Center, Bandung, West Java, Indonesia; Empresa Brasileira De Telecominicacoes has changed its name to Embratel-Empresa Brasileira De Telecomunicacoes, Rio De Janiero, RJ, Brazil; GN Nettest AS has changed its name to Nettest, Brondby, Denmark; Infovista S.A. has changed its name to Infovista, Courtaboeuf Cedex, France; Integral Access has changed its name to Integral Access, Inc., Chelmsford, MA; ITEC has changed its name to Columbia Telecommunicaciones SA ESP, Santafe De Bogota, Columbia; Kingston Communications has changed its name to Kingston Communications (Hull) PLC, Wakefield, West Yorkshire, United Kingdom; Neo Consult APS has changed its name to Neoconsult APS, Friederiksberg, Denmark; Psytechics has changed its name to Psytechnics, Ipswich, Suffolk, United Kingdom; Rocket has changed its name to Rocket Software, Alameda, CA; TCSI Corporation has changed its name to Rocket Software, Alameda, CA; Telecoremance has changed its name to Architelco, Valbonne, France; Telecom has changed its name to Columbia Telecommunicaciones SA ESP, Santafe De Bogota, Columbia; Telekomunikacja Polska S.A. has changed its name to Telekomunikacja Polska SA, Warszawa, Poland; Toshiba Corporation has changed its name to Toshiba Solutions Corporation, 1–1–1 Shibaura, Minato-Ku, Tokyo, Japan; and Zvolve has changed its name to Zvolve Systems, Inc., Duluth, GA.

The following members have cancelled or have had their memberships cancelled: Abobase Systems Ltd., Tallinn, Estonia; Accelight Networks, Ottawa, Ontario, Canada, ACCUDATA Technologies, Allen, TX; Adventnet, Inc., Pleasanton, CA; AI Metrix, El Dorado Hills, CA; Applied Innovation Inc., Dublin, OH; AUDITEC, Paris, France; Avisto S.A., Sophia Antipolis, Valbonne, France; Bouygues TelCom, Boulogne-Billancourt, France; Broadband And Networking, Herndon, VA; Businessedge Solutions Inc., East Brunswick, NJ; Cap Gemini Ernst & Young, Atlanta, GA; CAPE Techonologies, Blackrock County, Dublin, Ireland, CINTEL, Bogota, D.C., Columbia; Clear, Lincolnshire, IL; Comnitel Technologies, Cork, Ireland; Component Insights, Inc., Campbell, CA; Connexn Technologies, Golden, CO; Corrigent Systems, Tel Aviv, Israel; ENA, Inc., Alpharetta, GA; ETIS, Brussels, Belgium; Hatteras Networks, Research Triangle Park, NC; International Centers For Telecommunication, Technology, Inc. Palatine, IL; ITTI-Institute of Communication and Information Technologies, Poznan, Wielkopolska, Poland; Ki Consulting & Solutions AB, Sundsvall, Sweden; Lemur Networks, Eatontown, NJ; Marc Malaise, Weston, FL; Meriton Networks, Ottawa, Ontario, Canada; Metro-Optix, Inc., Allen, TX; Murray Dunlop Ltd., Cam, Dursley, Gloucestershire, United Kingdom; NE Technologies, Inc., Norcross, GA; Neural Technologies, Petersfield, Hampshire, United Kingdom; New Generation Operations, E. Windsor, NJ; Nightfire Software, Inc., Oakland, CA; Objectif, Sydney, New South Wales, Australia; OKI Electric Industry Co., Chiba-shi, Chiba, Japan; Open Telecommunications, Bothell, WA; Ortia Ltd., Osix, Stockholm, Sweden; Panasonic Mobile Communications Co., Ltd., Kadoma City, Osaka, Japan (was a member from June 12, 1999 to March 31, 2004); Panduit Corporation, Tinley Park, IL; Photuris, Inc. Piscataway, NJ; QWest Communications, Denver, CO; Richstone LTD., Koto-ku, Tokyo, Japan; RMG, Inc., Basking Ridge, NJ; Sirius Software GMBH, Oberhaching, Germany; Softalia, Inc., Herndon, VA; Sybase, Inc., Dublin, CA; Taral Networks, Inc., Kanata, Ontario, Canada; TBoothe Communications, San Jose, CA; Tecnosistemi Spa Tlc Engineering & Services, Rozzano, Milanofiori, Italy; Telewest Communications, plc, Woking, Surrey, United Kingdom; Tellium, Inc., Oceanport, NJ; Tenor Networks, Inc., Acton, MA (was a member from December 18, 1999 to January 18, 2004); Tropic Networks, Inc., Ottawa, Ontario, Canada; University College London, Bath, Avon, United Kingdom; University of Glasgow, Glasgow, Scotland, United Kingdom; Vertel Corp., Woodland Hills, CA; Viewgate Networks, Kent, United Kingdom; Visionael, Palo Alto, CA; and Wisor Telecom, Gaithersburg, MD.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on November 12, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 3, 2004 (69 FR 5186).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–18869 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 12, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the

recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Dolphin Integration, Meylan, France; and Hong Kong University of Science and Technology, Hong Kong, Hong Kong-China have been added as parties to this venture. Also, Cira Nova, Inc., Campbell, CA; ClearSpeed Technology Ltd. (Pixelfusion), Stoke Gifford, Bristol, England, United Kingdom; Himanshu Dwivedi (individual member), San Francisco, CA; Ganesh Gopalakrishnan (individual member), Salt Lake City, UT; Rabi Mahapatra (individual member), College Station, TX; Diethard Mahorka (individual member), Melk, Austria; Cyril Rayan (individual member), San Jose, CA; Eung Shin (individual member), Atlanta, GA; Christos Sotirou (individual member), Heraklion, Greece; and Thomson Multimedia, Villingen-Schwenninge, Germany have been dropped as parties to this venture.

No other changes have been made in either membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 12, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 3, 2004 (69 FR 24195).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–18870 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 5, 2004, and published in the **Federal Register** on March 15, 2004, (69 FR 12179), Mallinckrodt Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Norlevorphanol (9634)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Hydromorphone (9150)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Metopon (9260)	II
Dextropropoxyphene (9273)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances for internal use and for sale to other companies.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Mallinckrodt Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Mallinckrodt Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 28, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18928 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection Request Submitted for Public Comment and Recommendations; The Supplemental Survey on Unemployment Insurance Non-Filers

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to insure that requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed new collection of survey data on unemployment insurance (UI) non-filers as part of the evaluation of the UI program. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Submit on or before October 18, 2004.

ADDRESSES: Send comments to: Janet Javar, U.S. Department of Labor, Employment and Training Administration/Office of Policy Development, Evaluation and Research, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 693–3677 (this is not a toll-free number); *javar.janet@dol.gov*; Fax: (202) 693–2766 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Janet Javar, U.S. Department of Labor, Employment and Training Administration/Office of Policy

Development, Evaluation and Research, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 693–3677 (this is not a toll-free number); *javar.janet@dol.gov*; Fax: (202) 693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

ETA plans to request clearance for the collection of data via a Supplemental Survey of Unemployment Insurance Non-Filers to be conducted in conjunction with the January 2005, May 2005, July 2005, and November 2005 Current Population Survey (CPS). Through an interagency agreement between ETA and the Census Bureau, the Census Bureau will administer the supplement with the CPS. Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9, authorize the collection of survey data by the Census Bureau. The Supplemental Survey of Unemployment Insurance Non-Filers is sponsored by ETA. This supplement is being conducted under the authority of Sections 171(c), 172(b), 189(c), 189(e) [29 U.S.C. 2916(c)(2), 2917(b) and 2939(c) & (e)] of the Workforce Investment Act of 1998.

ETA collaborated with the Census Bureau and the Bureau of Labor Statistics on two earlier UI non-filer supplements conducted with the CPS: The first supplement was conducted in late 1989 and early 1990 (OMB Number 1220–0122 Expired March 31, 1990), and the second was conducted in 1993 (OMB Number 1220–0122 Expired January 31, 1994). This supplement will update ETA's knowledge about how often and why unemployed individuals choose not to apply for unemployment benefits. Analysis from the survey data will be used by the Department of Labor to help improve the UI system.

Desired Focus of Comments

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed ICR can be obtained by contacting the office listed above in the addressee section of this notice.

Current Actions

The UI information will be collected by both personal visit and telephone interviews in conjunction with the regular CPS interviewing during January, May, July, and November 2005. All interviews are conducted using computer-assisted interviewing. Respondents are informed that this is a voluntary survey.

Type of Review: New.

Agency: Employment and Training Administration.

Title: The Supplemental Survey of Unemployment Insurance Non-Filers.

Agency Number: 1205–0NEW.

Affected Public: Households.

Estimated Number of Respondents: 6,000 (total for all 4 months).

Estimated Time Per Response: 1 minute.

Estimated Total Annual Burden Hours: 100.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information request; they will also become a matter of public record.

Dated: August 12, 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 04–18916 Filed 8–17–04; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–096]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Wednesday, September 8, 2004, 9 a.m. to 4 p.m., and Thursday, September 9, 2004, 9 a.m. to 12 noon.

ADDRESSES: NASA HQ, 300 E Street, SW., Washington, DC, Room: PRC 9H40.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting

—Minority Enterprise Development Week (MED Week)

—Agency Transformation

—Overview of Small Business Program

—Public Comment

—Panel Discussion and Review

—Office of Small and Disadvantaged Business Utilization National Program Update

—Agency Minority Business Recognition Program

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; employee/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mr. Lamont Hames via e-mail at *lhames@nasa.gov* or by telephone at 202–358–2088. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–18948 Filed 8–17–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 4, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *records.mgt@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Homeland Security, Federal Emergency Management Agency (N1–311–04–3, 2 items, 2 temporary items). Files relating to care provided during emergencies to patients and animals affected by the event. Included are such materials as patient medical assessment and treatment records, patient logs, patient transportation information forms, and animal medical assessment and treatment records.

2. Department of Justice, Environment and Natural Resources Division (N1–60–04–8, 4 items, 3 temporary items). Case files relating to water rights that are comprised of a single section/volume of documentation. Also included are electronic copies of records relating to water rights cases that are created using word processing and electronic mail. Recordkeeping copies of case files consisting of more than one section/volume are proposed for permanent retention.

3. Department of Justice, Drug Enforcement Administration (N1–170–04–8, 5 items, 5 temporary items). Master files, outputs, and documentation associated with the Polygraph Information Tracking System, an electronic system used to track the status of polygraph tests performed on agency employees, foreign assistants, and criminals. Also included are electronic copies of documents created using electronic mail and word processing.

4. Department of Justice, Drug Enforcement Administration (N1–170–04–9, 5 items, 5 temporary items). Master files, outputs, and documentation associated with the Enhanced Non-Drug Evidence Database System, an electronic system used to track and report on the status of non-drug evidence and pertinent bulk drug exhibits taken into agency custody. Also included are electronic copies of documents created using electronic mail and word processing.

5. Department of Labor, Employment and Training Administration, (N1–369–04–1, 3 items, 1 temporary item). Electronic copies of records produced using electronic mail and word processing that are associated with agency publications. Recordkeeping copies of publications are proposed for permanent retention.

6. Department of State, Bureau of Diplomatic Security (N1–59–04–3, 5 items, 5 temporary items). Inputs, system data, outputs, and documentation associated with an Office of Foreign Missions electronic system that contains data relating to members of foreign missions, including

documentation concerning such matters as issuance of drivers' licenses, immunity from prosecution, and tax exemptions.

7. Department of Transportation, Federal Aviation Administration (N1–237–04–1, 6 items, 5 temporary items). Records relating to inspections of air carriers, flight schools, repair stations, and other entities involved in aviation. Included are such records as inspection forms, correspondence, and individual inspection reports. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of annual reports are proposed for permanent retention.

8. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–2, 4 items, 4 temporary items). Master files and system documentation relating to an electronic system used for integrated enterprise resource planning in order to ensure product accountability at agency facilities. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–9, 4 items, 3 temporary items). Records relating to agreements under which the agency reimburses other Federal agencies. Also included are electronic copies of records created using electronic mail and word processing that relate to agreements. Proposed for permanent retention are recordkeeping copies of agreements and related records pertaining to projects in which the agency receives reimbursement.

10. Environmental Protection Agency, Agency-wide (N1–412–04–3, 3 items, 3 temporary items). Paper and electronic records relating to investigations and hazardous waste clean up activities at formerly used defense sites. Included are such records as reports and correspondence pertaining to sampling and assessment of contaminated areas, cleanup and site closeout, and other matters. Historically valuable records relating to these activities are filed in permanent Superfund and related case files. Also included are electronic copies of records created using electronic e-mail and word processing.

11. Federal Retirement Thrift Investment Board, Office of Administration (N1–474–04–2, 5 items, 5 temporary items). Debt collection case files and other records that relate to debts owed to the agency by Thrift Savings Plan participants, their beneficiaries, and others. Also included are electronic copies of records created using electronic mail and word processing.

12. General Services Administration, Office of the Inspector General (N1–269–04–1, 4 items, 4 temporary items). Electronic copies of records created using electronic mail and word processing that relate to inspections of field offices, pre-appointment investigations of criminal investigators, and Inspector General employees who testify in criminal matters. This schedule also increases the retention period of recordkeeping copies of these files, which were previously approved for disposal.

13. Tennessee Valley Authority, Radiation Protection Program (N1–142–04–3, 22 items, 22 temporary items). Paper, microfilm, and electronic records relating to radiation protection activities. Records pertain to such matters as the radiation exposure history of individual employees, radiological control programs, and procedures to deal with radiological emergencies. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: August 9, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–18871 Filed 8–17–04; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Monticello Nuclear Generating Plant; Exemption

1.0 Background

The Nuclear Management Company, LLC (NMC) is the holder of Facility Operating License No. DPR–22, which authorizes operation of the Monticello Nuclear Generating Plant (MNGP). NMC provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facility consists of a boiling-water reactor located in Wright County, Minnesota.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.48(b), "Fire Protection," specifies that Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," established fire protection requirements to satisfy 10 CFR Part 50, Appendix A, General Design Criterion 3, "Fire Protection." Appendix R, Section III.G.2.b, specifies that (1) Cables and equipment and associated non-safety circuits of redundant trains be separated by a horizontal distance of more than 20 feet with no intervening combustible or fire hazards, and (2) fire detectors and an automatic fire suppression system be installed in the fire area.

In Northern States Power's (the licensee for Monticello at that time) letter of June 30, 1982, it requested a permanent exemption from the automatic suppression system requirements of Appendix R, Section III.G.2.b for the suppression pool torus area. Northern States Power justified the exemption by stating the following:

> * * * the area is separated from other plant areas by three-hour fire rated barriers. Fire protection consists of smoke detectors, manual hose stations, and portable fire extinguishers. The only redundant safe shutdown equipment in the area consists of instrumentation for measuring the water temperature and level in the torus. The redundant trains are separated by one hundred feet and are free of intervening combustibles. Essentially no combustible material is stored or located in the area. Furthermore, all surfaces are concrete except for the torus, which is steel. All cables are installed in conduit.

The technical requirements of Section III.G.2 were not met in fire zone 1F (the torus compartment at MNGP) because cables and components of redundant shutdown divisions were not protected with area-wide automatic sprinkler system.

The NRC's letter of June 16, 1983, granted the exemption request, citing the following:

> * * * because of the restricted access to this area, the probability of an exposure fire from the accumulation of transient combustibles, during normal operation, is low. We find that this feature, in conjunction with the one hundred feet of separation between redundant trains and early warning fire detection, provides reasonable assurance that one train will be maintained free of fire damage.

NMC's letter of September 15, 2003, as supplemented February 24, 2004, resubmitted its request for a permanent exemption from the requirements of Section III.G.2.b for fire area IV/fire zone 1F, stating the following:

> * * * in 1985, a new safe shutdown analysis crediting only the minimum systems and equipment required to achieve safe shutdown was developed. This new shutdown methodology required the use of Core Spray, Safety Relief Valves and Residual Heat Removal (RHR) in the Suppression Pool Cooling mode. Prior to that time, these systems were not required to achieve safe shutdown given a fire in Fire Area IV/Fire

Zone 1F. Both Division I and Division II components and cables for the Core Spray and Residual Heat Removal systems are contained within this fire area. Only one division of Safety Relief Valve control and indicating cables is located with this fire area. The impact of this revised shutdown methodology on the Fire Area IV/Fire Zone 1F exemption was not addressed when the shutdown model was revised. In addition, the Division II suppression pool temperature cable exit from the Torus Compartment and the location of the Division II suppression pool level transmitter were incorrectly depicted in Enclosure 2 of Reference G.2.

* * * As a result of internal assessments of the MNGP Fire Protection Program, NMC determined that the existing exemption from 10 CFR 50, Appendix R, Section III.G.2.b for the Torus Compartment * * * did not bound the existing plant configuration and the current MNGP Appendix R Safe Shutdown Analysis. The NMC has completed an investigation into the Torus Compartment design basis and has determined that an exemption is appropriate for this area.

The results of the NRC staff's evaluation of NMC's request are provided below.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances exist if it is not necessary to apply the technical requirements of 10 CFR Part 50 to achieve the underlying purpose of the regulation. The underlying purpose of Appendix R, Section III.G.2.b to 10 CFR Part 50 is to assure that one train of redundant safe shutdown equipment will be maintained free of fire damage.

The NRC staff analyzed the following items in the suppression pool torus area at MNGP to satisfy the requirements of 10 CFR 50.12 for granting the exemption from the automatic suppression system requirements of Appendix R, Section III.G.2.b:

- Minimal amount of fixed and transient combustibles
- Smoke detector provisions
- Existing separation between redundant trains of core spray valves, RHR cooling valves, suppression pool level transmitters, and the suppression pool temperature monitoring system (SPOTMOS).

NMC's letter of September 15, 2003, stated that fixed combustibles consist of a single ¾-inch diameter radiax antenna cable, routed around approximately 70 percent of the perimeter wall. Other cables within the torus compartment are in conduit except for short runs of exposed cable that may exist between a device and its associated junction box or conduit. This amount of fixed combustibles is negligible. NMC also said that transient combustibles were controlled by procedure.

The NRC staff sent NMC a request for additional information (RAI) dated January 30, 2004, asking NMC to clarify the type and quantity of transient combustibles it allowed into fire zone 1F. NMC's RAI response letter of February 24, 2004, disclosed the transient combustible loading for fire zone 1F. The loading consisted of two gallons of general-purpose solvent and three fiberglass ladders for a total of 1.7 million British thermal units (BTUs) equating to 142 BTUs per square foot. NMC evaluated additional combustibles for outage pre-staging that have been in the fire zone and totaled them to be 2.4 million BTUs. This is less than 1100 BTUs per square foot. These amounts of transient combustibles are minimal.

The arrangement of the core spray valves is shown on Figure 1 of NMC's September 15, 2003, submittal. Division 1 core spray valve MO–1749 is located just below the ceiling of the torus compartment near column lines N and 8.9. Division 2 core spray valve MO–1750 is located in the same compartment near column lines N and 3.1. Approximately 130 feet separate these valves and their associated cables. The drywell also blocks the direct line-of-sight. Smoke detectors, that are annunciated in the control room, are near each core spray valve with three more detectors intervening on each of the two paths around the torus compartment.

The arrangement of the RHR cooling valves is also shown on Figure 1 of NMC's submittal. Division 1 RHR cooling valves MO–2006 and MO–2008 are located in the torus compartment between column lines N and P and 7.9. Division 2 RHR cooling valve MO–2009 is located in the same compartment between column lines N and P and 4.1 and 5.1. Approximately 130 feet separate the Division 1 valves and their associated cables from the Division 2 valves. The drywell also blocks the direct line-of-sight. Smoke detectors, that are annunciated in the control room, are near each RHR cooling valve with three more detectors intervening on each of the two paths around the torus compartment.

As previously discussed in Section 2.0 of this evaluation, the NRC's letter of June 16, 1983, granted an exemption for the suppression pool level transmitters. However, during the NRC staff's evaluation of NMC's September 15, 2003, exemption request, the staff identified discrepancies between Figures 1 and 2 concerning the routing of conduit for Division 1 and Division 2 suppression pool level transmitters LT7338A and LT338B. The NRC's RAI of January 30, 2004, questioned the location of the conduit and the associated penetrations exiting the fire zone. NMC's RAI response corrected the location and placed all of the information on Figure 2 of the revised submittal. Division 1 and Division 2 components are separated by at least 75 feet. Smoke detectors that are annunciated in the control room are near each level transmitter, with additional detectors intervening between the divisions in the torus compartment.

The SPOTMOS at MNGP consists of two redundant divisions. Each of the divisions has eight resistance temperature detectors (RTDs). Cabling inside conduit connects the RTDs in each division, runs around the suppression pool in close proximity to each other, and then exits the fire zones at least 75 feet apart. NMC's letter of September 15, 2003, stated that the system could operate in an "operable but degraded" mode to support post-fire safe shutdown with as little as one detector in one train being operable.

Due to the close proximity of the conduits, and the concern that a single fire could involve both Division 1 and Division 2 conduits, the NRC staff requested further information on the SPOTMOS in its RAI. Specifically, the NRC staff requested NMC to address how the SPOTMOS would automatically eliminate (1) a failed temperature sensor, and (2) a fire-induced failure (hot short, short to ground, open, or increased/decreased resistance or voltage) of the cable to the temperature elements that is inside conduit. NMC's RAI response of February 24, 2004, described the operation of the system, addressing each of the failure modes. The critical distance between Division 1 and Division 2 for operation in the operable-but-degraded mode is at least 85 feet (where the cables enter the torus compartment). Smoke detectors, that annunciate in the control room, are located near each cable entry. Additional smoke detectors are distributed throughout the torus compartment.

The NRC staff concludes that NMC has met the underlying purpose of Appendix R, Section III.G.2.b, without having an automatic fire suppression system in the suppression pool torus area at MNGP considering the following:

• Minimal amount of fixed and transient combustibles present
• Smoke detector provisions
• Separation between redundant trains of core spray valves, RHR cooling valves, and suppression pool level transmitters
• Ability of SPOTMOS to continue to operate with at least one RTD on one train in the operable-but-degraded mode for any fire in fire zone 1F that involved both conduit trains

The NRC staff further concludes that pursuant to 10 CFR 50.12(a)(2)(ii), application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. Therefore, NMC's exemption request is acceptable.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants NMC a permanent exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.G.2.b, to not provide an automatic fire suppression system for fire area IV/fire zone 1F at MNGP.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (69 FR 46187).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of August 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–18885 Filed 8–17–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

FY 2004–2009 Strategic Plan, NUREG–1614, Volume 3; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1614, Volume 3, "U.S. Nuclear Regulatory Commission, FY 2004–2009 Strategic Plan," dated August 12, 2004.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission today issued its new Strategic Plan for fiscal years 2004–2009, establishing how the agency intends to carry out its mission.

The plan includes five goals of safety, security, openness, effectiveness, and management, which together support our ability to maintain the public health and safety. It also reflects the interrelationship among safety, security, and emergency response. Each goal has strategic outcomes, which will provide a general barometer whether the goals are being achieved. There are also strategies that describe actions intended to accomplish the goals.

The agency's five goals are described below in further detail:

Safety

Ensure protection of public health and safety and the environment. The NRC's primary goal continues to be the safe use of radioactive materials to ensure the protection of public health and safety and the environment. Specific strategies are identified to ensure there are no reactor accidents or releases of radioactive materials that result in significant radiation exposures, fatalities or adverse environmental impacts.

Security

Ensure the secure use and management of radioactive materials. The goal on security has been added in response to the events of September 11, 2001. To achieve this goal, specific strategies are identified to ensure there are no instances in which licensed radioactive materials are used in a terrorist act in the United States.

Openness

Ensure openness in our regulatory process. The agency recognizes that stakeholders need to be informed about, and have an opportunity to participate in the NRC's regulatory process. The NRC views nuclear regulation as the public's business and, as such, it should be transacted openly and candidly, to the extent possible in order to maintain the public's confidence but not jeopardize national security.

Effectiveness

Ensure that NRC actions are effective, efficient, realistic, and timely. The Agency's drive to improve its performance, coupled with increasing demands on the NRC's finite resources, clearly indicates a need for the Agency to become more effective, efficient, realistic, and timely in its regulatory activities. Initiatives related to this goal are congruent with the Agency's safety and security goals, and serve to ensure that available resources are optimally directed toward the NRC's mission.

Management

Ensure excellence in Agency management to carry out the NRC's Strategic Objective. The Agency believes that management excellence is essential to support the staff in accomplishing the Agency's mission. This goal includes strategies for the management of human capital, infrastructure management, financial management, electronic government, budget and performance integration, and internal communications.

Success in achieving each goal will be gauged primarily through performance measures developed for the agency's annual performance budget and will be reported in the annual Performance and Accountability Report.

Stakeholder feedback was particularly valuable in helping the Commission develop the Strategic Plan.

NUREG–1614, Volume 3, and other publicly available documents related to this notice are available for electronic viewing on public computers in the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR's reproduction services contractor will provide copies of publicly available documents for a fee.

Publicly available documents related to this notice, including public comments received, are also available electronically through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html.* ADAMS provides text and image files of NRC's public documents. NUREG–1614, Volume 3, is publicly available in ADAMS under Accession No. ML042230185, or on the agency's Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *PDR@nrc.gov.*

A free single copy of NUREG–1614, Volume 3, to the extent of availability, may be requested by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001; facsimile: (301) 415–2289; e-mail: *DISTRIBUTION@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: George Smolik on (301) 415–0222 or William Lovell on (301) 415–6230, in the Division of Planning, Budget, and Analysis, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 12th day of August, 2004.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 04–18884 Filed 8–17–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 301 and Forms ATS and ATS–R—SEC File No. 270–451—OMB Control No. 3235–0509.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation ATS provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 301 of Regulation ATS contains certain notice and reporting requirements, as well as additional obligations that only apply to alternative trading systems with significant volume. Rule 301 describes the conditions with which an alternative trading system must comply to be registered as a broker-dealer. The Rule requires all alternative trading systems that wish to comply with Regulation ATS to file an initial operation report on Form ATS. The initial operation report requires information regarding operation of the system including the method of operation, access criteria and the types of securities traded. Alternative trading systems are also required to supply updates on Form ATS to the Commission, describing material changes to the system, and quarterly transaction reports on Form ATS-R. Alternative trading systems are also required to file cessation of operations reports on Form ATS.

Alternative trading systems with significant volume are required to comply with requirements for fair access and systems capacity, integrity and security. Under Rule 301, such alternative trading systems are required to establish standards for granting access to trading on its system. In addition, upon a decision to deny or limit an investor's access to the system, an alternative trading system is required to provide notice to the investor of the denial or limitation and their right to an appeal to the Commission. Regulation ATS requires alternative trading systems to preserve any records made in the process of complying with the systems' capacity, integrity and security requirements. In addition, such alternative trading systems are required to notify Commission staff of material systems outages and significant systems changes.

The Commission uses the information provided pursuant to the Rule to comprehensively monitor the growth and development of alternative trading systems to confirm that investors effecting trades through the systems are adequately protected, and that the systems do not impede the maintenance of fair and orderly securities markets or otherwise operate in a manner that is inconsistent with the federal securities laws. In particular, the information collected and reported to the Commission by alternative trading systems enables the Commission to evaluate the operation of alternative trading systems with regard to national market system goals, and monitor the competitive effects of these systems to ascertain whether the regulatory framework remains appropriate to the operation of such systems. Without the information provided on Forms ATS and ATS-R, the Commission would not have readily available information on a regular basis in a format that will allow it to determine whether such systems have adequate safeguards.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 50 respondents.

An estimated 50 respondents will file an average total of 379 responses per year, which corresponds to an estimated annual response burden of 1,532.5 hours. At an average cost per burden hour of approximately $77.03, the resultant total related cost of compliance for these respondents is $118,046.26 per year (1,532.5 burden hours multiplied by $77.03 per hour; a slight discrepancy is due to arithmetic rounding).

Compliance with Rule 301 is mandatory. The information required by the Rule 301 is available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Regulation ATS requires alternative trading systems to preserve any records, for at least three years, made in the process of complying with the systems capacity, integrity and security requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) The Desk Officer for the SEC, by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: August 13, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18910 Filed 8–17–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 302; SEC File No. 270–453; OMB Control No. 3235–0510.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation ATS provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Rule 302 of Regulation ATS describes the recordkeeping requirements for alternative trading systems that are not national securities exchanges. Under Rule 302, alternative trading systems are required to make a record of subscribers to the alternative trading system, daily summaries of trading in the alternative trading system and time-sequenced records of order information in the alternative trading system.

The information required to be collected under the Rule should increase the abilities of the Commission, state securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. If the information is not collected or collected less frequently, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 50 respondents.

An estimated 50 respondents will spend approximately 1,800 hours per year to comply with the recordkeeping requirements of Rule 302. At an average cost per burden hour of $86.54, the resultant total related cost of compliance for these respondents is $155,772.00 per year (1,800 burden hours multiplied by $86.54/hour).

Compliance with Rule 302 is mandatory. The information required by the Rule 302 is available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Regulation ATS requires alternative trading systems to preserve any records, for at least three years, made in the process of complying with the systems capacity, integrity and security requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) the Desk Officer for the SEC, by sending an email to: *David_Rostker@omb.eop.gov;* and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: August 13, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18911 Filed 8–17–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 19b–5 and Form PILOT; SEC File No. 270–448; OMB Control No. 3235–0507.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 19b–5 provides a temporary exemption from the rule-filing requirements of Section 19(b) of the Securities Exchange Act of 1934 ("Act") to self-regulatory organizations ("SROs") wishing to establish and operate pilot trading systems. Rule 19b–5 permits an SRO to develop a pilot trading system and to begin operation of such system shortly after submitting an initial report on Form PILOT to the Commission. During operation of the pilot trading system, the SRO must submit quarterly reports of the system's operation to the Commission, as well as timely amendments describing any material changes to the system. After two years of operating such pilot trading system under the exemption afforded by Rule 19b–5, the SRO must submit a rule filing pursuant to Section 19(b)(2) of the Act in order to obtain permanent approval of the pilot trading system from the Commission.

The collection of information is designed to allow the Commission to maintain an accurate record of all new pilot trading systems operated by SROs and to determine whether an SRO has properly availed itself of the exemption afforded by Rule 19b–5.

The respondents to the collection of information are SROs, as defined by the Act, including national securities exchanges and national securities associations.

Six respondents file an average total of 6 initial reports (estimated to be 144 total burden hours), 24 quarterly reports (estimated to be 72 total burden hours), and 12 amendments per year (estimated to be 36 total burden hours), with an estimated total annual response burden of 252 hours. At an average hourly cost of $51.71, the aggregate related cost of compliance with Rule 19b–5 for all respondents is $13,032 per year (252 burden hours multiplied by $51.71/hour = $13,031).

Although Rule 19b–5 does not in itself impose recordkeeping burdens on SROs, it relies on existing requirements imposed by Rule 17a–1 under the Act to require SROs to retain all the rules and procedures relating to each pilot trading system operating pursuant to Rule 19b–5 and to make such records available for

Commission inspection for a period of not less than five years, the first two years in an easily accessible place.

Compliance with Rule 19b–5 is mandatory. Information received in response to Rule 19b–5 shall be available only for examination by the Commission, other agencies of the federal government, state securities authorities and SROs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) the Desk Officer for the SEC, by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: August 13, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18912 Filed 8–17–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 303; SEC File No. 270–450; OMB Control No. 3235–0505.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation ATS provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 303 of Regulation ATS describes the record preservation requirements for alternative trading systems that are not national securities exchanges.

Alternative trading systems that register as broker-dealers, comply with Regulation ATS and meet certain volume thresholds are required to preserve all records made pursuant to Rule 302, which includes information relating to subscribers, trading summaries and order information. Such alternative trading systems are also required to preserve records of any notices communicated to subscribers, a copy of the system's standards for granting access to trading and any documents generated in the course of complying with the capacity, integrity and security requirements for automated systems under Rule 301(b)(6) of Regulation ATS. Rule 303 also describes how such records must be kept and how long they must be preserved.

The information contained in the records required to be preserved by the Rule will be used by examiners and other representatives of the Commission, state securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. Without the data required by the proposed Rule, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 50 respondents.

An estimated 50 respondents will spend approximately 200 hours per year (50 respondents at 4 burden hours/respondent) to comply with the record preservation requirements of Rule 303. At an average cost per burden hour of $86.54, the resultant total related cost of compliance for these respondents is $17,308.00 per year (200 burden hours multiplied by $86.54/hour).

Compliance with Rule 303 is mandatory. The information required by the Rule 303 is available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Regulation ATS requires alternative trading systems to preserve any records, for at least three years, made in the process of complying with the systems capacity, integrity and security requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) the Desk Officer for the SEC, by sending an email to: *David_Rostker@omb.eop.gov;* and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: August 13, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18913 Filed 8–17–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50187; File No. SR–Amex–2004–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Reduce ETF Transaction Fees for Specialists and Registered Traders and the Cap on ETF Transaction Charges for Specialists

August 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in items I, II, and III below, which items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as establishing or changing a due, fee, or other charge under section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce transaction fees for specialists and registered options traders ("ROTs") in connection with transactions in exchange traded fund shares ("ETFs") and to reduce the cap on ETF transaction charges for specialists. The text of the revised Fee Schedule is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to reduce transaction charges imposed on specialists and ROTs in connection with Exchange transactions in ETFs and to reduce the cap on ETF transaction charges for specialists. For purposes of the Exchange's Fee Schedule, ETFs include portfolio depositary receipts, index fund shares and trust issued receipts.

The Exchange represents that the proposal is effective as of August 1, 2004, and constitutes a 25% reduction (for both specialists and ROTs) for ETF transaction charges without reimbursed fees to third parties. In addition, the Exchange represents that the proposed rule change will result in a 22.91% reduction for specialists and a 24% reduction for ROTs for ETF transaction charges for which the Exchange pays unreimbursed fees to a third party.

The Exchange believes that this reduction in ETF transaction fees will provide greater incentives for specialists and ROTs to competitively quote their markets and attract additional order flow. In addition, the Exchange also believes that the reduction will help to maintain existing floor operations of member firms at the Amex.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [5] in general and furthers the objectives of 6(b)(4) of the Act [6] in particular regarding the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using Exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange represents that no written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) thereunder [8] because it changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–58. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–58 and should be submitted on or before September 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18907 Filed 8–17–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] See 15 U.S.C. 78(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50182; File No. SR–DTC–2004–05]

Self-Regulatory Organizations; the Depository Trust Company; Order Granting Approval of Proposed Rule Change Relating to the Look-Ahead Process

August 11, 2004.

On May 7, 2004, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–DTC–2004–05 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on July 2, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

I. Description

The purpose of this filing is to allow DTC to expand the application and extend the benefits of its Look-Ahead process to all equity transactions, all valued pledge transactions, and all valued release transactions.[3] DTC's Look-Ahead process is designed to reduce transaction settlement blockage. Currently, it is available only for municipal and corporate debt transactions.[4] The Look-Ahead processing system reduces transaction settlement blockage by identifying a receive transaction pending due to a net debit cap insufficiency and determines whether there is an offsetting delivery transaction in the same security that is pending because of a quantity deficiency. The system calculates the net effect of the offsetting transactions in the accounts of the three participants involved. If the net effect of the offsetting transactions is that each of the three accounts is in compliance with DTC's risk management systems controls, the transactions will be completed.

As a result of the Look-Ahead process reducing transaction settlement blockages in municipal and corporate debt transactions, DTC participants have experienced improved timeliness of completion of transactions in the system, increased trade certainty, and improved straight-through processing. DTC intends to extend the benefits and to expand the application of its Look-Ahead process to all equity transactions, all valued pledge transactions, and all valued release in the third quarter of 2004.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. By expanding the securities to which its Look-Ahead process will be applied, the proposed rule change should reduce the number of blocked transactions at DTC. As such, the proposed rule change is consistent with DTC's statutory obligation to promote the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–DTC–2004–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18906 Filed 8–17–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50183; File No. SR–NASD–2004–109]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Increase the Initial Inclusion Requirements for Certain Foreign Securities Seeking To List on the Nasdaq SmallCap Market

August 11, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify Rule 4320 to increase the initial inclusion requirements for non-Canadian foreign securities and American Depositary Receipts seeking to list on the Nasdaq SmallCap Market ("SmallCap Market"). Nasdaq will implement the proposed rule change immediately upon approval by the Commission.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].[3]

* * * * *

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the criteria set out in this subsection for inclusion in Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.

(1) No change.

(2) (A) For initial inclusion, *the issue shall have a minimum bid price of $4 and* the issuer shall have:

(i)–(iii) No change.

(B)–(D) No change.

(3)–(4) No change.

(5) There shall be at least 1,000,000 publicly held shares for initial inclusion

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49924 (June 28, 2004), 69 FR 40426.

[3] Securities Exchange Act Release No. 48007 (June 10, 2003), 68 FR 35744 (June 16, 2003) (File No. DTC–2003–07) (order allowing DTC to establish Look-Ahead processing).

[4] *Id.*

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the text for Rule 4320 that appears in the electronic NASD Manual found at *www.nasd.com*, which was current as of the date of this filing. No other pending rule filings would affect the text of this rule. Telephone conversation between Arnold P. Golub, Associate Vice President, Nasdaq, and Florence Harmon, Senior Special Counsel, Division, Commission on August 11, 2004.

and 500,000 publicly held shares for continued inclusion. *For initial inclusion, such shares shall have a market value of at least $5 million.* In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares for initial inclusion and 100,000 publicly held shares for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be included in Nasdaq so long as the security satisfies the listing criteria for common stock. Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(6)–(20) No change.

(21–25) Reserved.

(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, no initial inclusion requirements relating to share price or market value of publicly held shares are applicable to non-Canadian foreign issuers seeking to list on the Nasdaq SmallCap Market. By contrast, domestic issuers must have a bid price of at least $4 and a market value of publicly held shares of at least $5,000,000 for initial listing. Nasdaq proposes to amend Rule 4320 to apply these same initial inclusion requirements to non-Canadian foreign issuers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[4] in general, and with Section 15A(b)(6) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. As previously mentioned, Nasdaq is proposing this rule change to apply the same, heightened quantitative initial inclusion standards upon non-Canadian foreign issuers that currently apply to domestic and Canadian issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2004–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–NASD–2004–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASD–2004–109 and should be submitted on or before September 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18908 Filed 8–17–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50178; File No. SR–OCC–2004–04]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Reduce the Thresholds Applied to Equity Options for Purposes of Exercise by Exception Processing on Expiration

August 10, 2004.

I. Introduction

On March 19, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–OCC–2004–04 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on July 2, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The purpose of the proposed rule change is to amend OCC's Rule 805, "Expiration Date Exercise Procedure," which describes OCC's expiration date exercise procedures including exercise by exception processing. Specifically, OCC will reduce the threshold amounts used in its exercise by exception processing to determine which equity options will be automatically exercised.

Background

OCC has for years maintained an "exercise by exception" procedure. Under that procedure, options that are in the money at expiration by more than a specified threshold amount are exercised automatically unless the clearing member carrying the position instructs OCC otherwise. Equity options are determined to be in the money or not based on the difference between the exercise price and the closing price of the underlying equity interest on the last trading day before expiration. The current exercise by exception thresholds for equity options are $.75 for options in a clearing member's customers' account and $.25 for options in any other account (*i.e.*, firm and market makers' accounts).

Discussion

OCC's Roundtable has proposed that the threshold amounts for equity options be reduced to $.25 for options in customers' accounts and $.15 for options in all other accounts.[3] The Roundtable believes that reducing these thresholds will streamline expiration processing.

In response to the Roundtable's proposal, OCC analyzed equity options exercise information from the November 2003, December 2003, and January 2004 expirations. From its analysis, OCC determined that clearing members exercised 93% to 97% of equity option contracts carried in their customers' accounts that were in the money by $.25 to $.74 (*i.e.*, the change in the "in the money" amount represented by the proposed customer account threshold). OCC's analysis also determined that exercise activity in the proposed "other account" range (*i.e.*, with an in the money amount of $.15 to $.24) supported the proposed threshold change.

OCC also surveyed all clearing members to obtain their views and comments on the proposed change. Survey results demonstrated strong support across the membership for the change. Of 116 clearing members, 105 responded to the survey with 96 clearing members in favor of the threshold change.[4] Clearing members supporting the change confirmed the Roundtable's view that it would significantly reduce the number of instructions they are required to input on expiration and would thereby shortening the timeframe for completing instructions to OCC.

OCC contacted each firm that opposed the threshold change. These firms expressed a concern about having to input more "do not exercise" instructions. All of these firms agreed that they could adapt to the change if supported by the majority of clearing members. OCC reviewed the positions carried by these firms and determined that, on average, they carry position in fewer than ten expiring series that are below the current threshold of $.75. This review led OCC to conclude that the threshold change would result in only a slight increase in processing time for these firms and that they would not be unduly burdened by its implementation.

The clearing member survey also asked firms to provide an estimate of the time needed to accommodate the threshold changes.[5] The majority of firms indicated that they could complete the necessary systems development and customer notifications within six months. OCC contacted any firm that commented on the proposed timeframes, and all expressed the view that their efforts would be completed in the six-month time period.

The Roundtable has requested of OCC that this change be implemented for the September 2004 expiration. If OCC determines that clearing members need additional time to complete preparations for the threshold change, OCC will implement the threshold change in accordance with such time needed. OCC anticipates implementation no later than for the October 2004 expiration. OCC will provide at least ten days' advanced notice to clearing members of the effective date for the new threshold amounts. Such notice will be provided through information memoranda and through other forms of electronic notice such as e-mail.

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[6] The Commission finds that OCC's proposed rule change is consistent with this requirement because reducing the exercise by exception thresholds applicable to equity options should provide for greater efficiency in the processing of equity options by allowing members to focus less attention on exception processing. As a result, OCC's proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49929 (June 28, 2004), 69 FR 40449.

[3] OCC's Roundtable is an OCC-sponsored advisory group comprised of representatives from OCC's participant exchanges, OCC, a cross-section of OCC clearing members, and industry service bureaus. The Roundtable considers operational improvements that may be made to increase efficiencies and to lower costs in the options industry.

[4] OCC also contacted clearing members that did not respond to its survey. These firms expressed no opinion on the matter.

[5] OCC used timeframes of zero to three months and four to six months in its survey.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

OCC–2004–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18909 Filed 8–17–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P047]

State of Kansas

As a result of the President's major disaster declaration for Public Assistance on August 3, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Geary, Shawnee, and Wyandotte Counties in the State of Kansas constitute a disaster area due to damages caused by severe storms, flooding and tornadoes occurring on June 12, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 4, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Fort Worth, TX 76155–2243.

The interest rates are:

	Percent
For Physical Damage:	
Non-profit organizations without credit available elsewhere	2.750
Non-profit organizations with credit available elsewhere	4.875

The number assigned to this disaster for physical damage is P04706.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: August 9, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–18880 Filed 8–17–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3609]

State of Louisiana

Morehouse Parish and the contiguous parishes of Ouachita, Richland, Union, and West Carroll in the State of Louisiana; and Ashley, Chicot, and Union Counties in the State of Arkansas constitute a disaster area due to severe thunderstorms and flooding that occurred on July 17 through July 18, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 11, 2004 and for economic injury until the close of business on May 10, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Fort Worth, TX 76155–2243.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	5.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.750
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ...	2.750

The numbers assigned to this disaster for physical damage are 360906 for Louisiana and 361006 for Arkansas. The numbers assigned to this disaster for economic injury are 9ZO300 for Louisiana and 9ZO400 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 10, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–18882 Filed 8–17–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3595]

State of Michigan (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective August 10, 2004, the above numbered declaration is hereby amended to reestablish the incident period as beginning on May 20, 2004 and continuing through and including June 8, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 30, 2004, and for economic injury the deadline is March 30, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 11, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–18881 Filed 8–17–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P046]

State of New York

As a result of the President's major disaster declaration for Public Assistance on August 3, 2004 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Allegany, Cattaraugus, Chautauqua, Delaware, Erie, Herkimer, Ontario, Saratoga, Schoharie, Steuben, Ulster, Washington, and Yates Counties in the State of New York constitute a disaster area due to damages caused by severe storms and flooding occurring on May 13, 2004 and continuing through June 17, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 4, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations without Credit Available Elsewhere	2.750
Non-Profit Organizations with Credit Available Elsewhere ...	4.875

The number assigned to this disaster for physical damage is P04606.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: August 9, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–18878 Filed 8–17–04; 8:45 am]

BILLING CODE 8025–01–P

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3611]

State of South Carolina

Greenville County and the contiguous counties of Abbeville, Anderson, Laurens, Pickens, and Spartanburg in the State of South Carolina; and Henderson, Polk, and Transylvania Counties in the State of North Carolina constitute a disaster area due to damages caused by torrential rains that occurred on July 29, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 11, 2004 and for economic injury until the close of business on May 10, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.375
Homeowners without Credit Available Elsewhere	3.187
Businesses with Credit Available Elsewhere	5.800
Businesses and Non-Profit Organizations without Credit Available Elsewhere	2.900
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	2.900

The number assigned to this disaster for physical damage is 361106 for South Carolina and 361206 for North Carolina. The number assigned to this disaster for economic injury is 9ZO500 for South Carolina and 9ZO600 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 10, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–18879 Filed 8–17–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4802]

Culturally Significant Objects Imported for Exhibition; Determinations: "Gerard Ter Borch"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "Gerard Ter Borch," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about November 7, 2004, to on or about January 30, 2005, Detroit Institute of Arts, Detroit, MI, from on or about February 27, 2005, to on or about May 22, 2005; and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 25, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–18931 Filed 8–17–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 6, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–18797.
Date Filed: August 3, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 ME–TC3 0205 dated August 3, 2004.
Mail Vote 400 Resolution 010r, TC23 Special Passenger Amending Resolution, from Hong Kong SAR to Middle East rl, Intended effective date: August 15, 2004.

Docket Number: OST–2004–18859.
Date Filed: August 5, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/429 dated June 29, 2004.
Finally Adopted Resolutions r1–r29, PAC/Meet/185 dated June 29, 2004, Intended effective date: January 1, 2005.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–18902 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 6, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–18841.
Date Filed: August 4, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 25, 2004.
Description: Application of Village Aviation, Inc. d/b/a Village Air Cargo, requesting an amendment of its certificate of public convenience and necessity to remove a condition in its certificate limiting its operations to those conducted within the State of Alaska.

Docket Number: OST–2004–18862.
Date Filed: August 6, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 27, 2004.

Description: Application of Scott Aviation, Inc. requesting a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property, and mail.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–18901 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Cancellation of Lease and Quitclaim Agreement Between the City of Fernandina Beach and the Federal Aviation Administration for the Fernandina Beach Municipal Airport, Fernandina Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties (approximately 4.9 acres) at the Fernandina Beach Municipal Airport, Fernandina Beach, FL from the condition, reservations, and restrictions as contained in a Cancellation of Lease and Quitclaim agreement between the FAA and the City of Fernandina Beach, dated July 9, 1947. The release of property will allow the City of Fernandina Beach to dispose of the property for other than aeronautical purposes. The property is located in the northwest corner of the airport in proximity to the approach of Runways 18 and 31. The parcel is currently designated as runway protection zone property. The property will be disposed of for the construction of a public-use access road to Crane Island. The fair market value of the property has been determined by appraisal to be $747,000. The airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the City Manager's office and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: September 17, 2004.

ADDRESSES: Documents are available for review at the City Manager's office, City of Fernandina Beach, 204 Ash Street, Fernandina Beach, FL 32034 and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Richard M. Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Richard M. Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 04–18951 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

PS–ACE100–2002–007, Policy Statement on Pitot Heat Indication Systems for 14 CFR Part 23, § 23.1326(b)(1)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of policy

SUMMARY: This notice announces the issuance of PS-ACE100–2002–007. This Policy Statement clarifies AC 23–17A and provides guidance pertaining to an Equivalent Level of Safety (ELOS) for 14 CFR, part 23, § 23.1326(b)(1), Pitot Heat Indication Systems. This was issued for Public Comment on October 28, 2003. No comments were received.

DATES: PS–ACE100–2002–007 was issued by the Manager, Small Airplane Directorate on August 5, 2004.

How to Obtain Copies: A paper copy of PS–ACE100–2002–007 may be obtained by contacting Mr. Leslie B. Taylor, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4134, fax (816) 329–4090. The policy will also be available on the Internet at *http://www.airweb.faa.gov/policy.*

Issued in Kansas City, Missouri on August 5, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–18952 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–5748, FMCSA–99–6480, FMCSA–2001–11426, FMCSA–2002–11714, FMCSA–2002–12294]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 26 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 9, 2004. Comments from interested persons should be submitted by September 17, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–99–5748, FMCSA–99–6480, FMCSA–2001–11426, FMCSA–2002–11714, and FMCSA–2002–12294 by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, (202) 366–2990, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Public Participation:* The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR Part 381. This notice addresses 26 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 26 applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Ronald M. Aure, William J. Bell, Frank R. Berritto, Robert B. Brewer, Jack D. Clodfelter, James W. Collins, Tommy J. Cross, Jr., Daniel K. Davis, III, Timothy J. Droeger, Robert A. Fogg, Dan M. Francis, Jack L. Henson, Gary T. Hicks, Oskia D. Johnson, Walter R. Morris, Richard W. O'Neill, Larry A. Priewe, Gary L. Reveal, Billy L. Riddle, Randolph L. Rosewicz, Robert L. Savage, Kenneth D. Sisk, Patrick D. Talley, John C. Vantaggi, Loren R. Walker,Timothy J. Wilson.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 26 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404, 64 FR 66962, 67 FR 10475, 67 FR 17102, 64 FR 68195, 65 FR 20251, 67 FR 38311, 67 FR 10471, 67 FR 19798, 67 FR 15662, 67 FR 37907, 67 FR 46016, 67 FR 57267). Each of these 26 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 17, 2004.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver. The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001) and are repeated below for the reader's convenience.

The FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31315 and 31136(e) can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequently comments submitted by interested parties. As indicated above, the agency previously published notices

of final disposition announcing its decision to exempt these 26 individuals from the vision requirement in 49 CFR 391.41(b)(10). That final decision to grant exemptions to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. Those notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Each of these 26 individuals identified in today's publication has successfully driven with an exception from the vision requirements for the past 2 years. Each driver has received physical examinations during the past 2-year period, in accordance with the program requirements. Either an ophthalmologist or optometrist has attested that each continued to meet the standard in 49 CFR 391.41(b)(10) in the better eye. Upon filing a renewal application, each of the 26 applicants has presented proof of continued qualification. Their vision impairment is stable. The driving record of all 26 renewal applicants continues to highlight their safe driving. These individuals have, and are continuing to, achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption.

Nonetheless, interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify the FMCSA. The FMCSA will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e), the FMCSA will take immediate steps to revoke the exemption of a driver.

The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: August 12, 2004.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 04–18900 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Unauthorized Excavations and the Installation of Third-Party Data Acquisition Devices on Underground Pipeline Facilities

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA/OPS is issuing this advisory bulletin to owners and operators of gas and hazardous liquid pipeline systems on the potential for unauthorized excavations and the unauthorized installation of acoustic monitoring devices or other data acquisition devices on pipeline facilities. These devices are used by entities that hope to obtain market data on hazardous liquid and gas movement within the pipelines. Recent events have disclosed that devices were physically installed on pipelines without the owners permission. Operators must control construction on pipeline right-of-ways and ensure that they are carefully monitored to keep pipelines safe. This is in line with our efforts to prevent third-party damage as reflected by our support of the Common Ground Alliance, which is a nonprofit organization dedicated to shared responsibility in damage prevention and promotion of the damage prevention Best Practices. This advisory bulletin emphasizes the need to ensure that only authorized and supervised excavations are undertaken along the nation's pipeline systems.

FOR FURTHER INFORMATION CONTACT: John Pepper by phone at (713) 270–9376, by fax at (713) 270–9515, or by e-mail at *john.pepper@rspa.dot.gov*, regarding the subject matter of this advisory bulletin. General information about the Research and Special Programs Administration, Office of Pipeline Safety (RSPA/OPS) programs may be obtained by accessing OPS' home page at *http://ops.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

RSPA/OPS had been advised of the unauthorized installation of devices on an operator's pipeline for the purpose of obtaining flow data for marketing purposes. The pipeline safety regulations require pipeline operators to carry out a written damage prevention program for buried pipelines. RSPA/OPS is encouraging operators to carefully review their damage prevention programs and to survey their right-of-ways to ensure the discovery of similar inappropriate actions. RSPA/OPS also reminds owners and operators of pipelines and the public of the critical importance of accurately locating underground piping and ensuring the qualifications of personnel performing this work. RSPA/OPS believes that this Advisory Bulletin is necessary to make operators aware of a potential threat to their pipelines and to ensure that they take appropriate action to detect and correct any damage associated with these unauthorized installations.

Advisory Bulletin (ADB–04–03)

To: Owners and operators of gas transmission and hazardous liquid pipelines.

Subject: Potential for unauthorized excavations and the installation of acoustic monitoring devices or other data acquisition devices on pipeline facilities.

Purpose: To ensure that pipeline owners and operators are aware of and take actions to prevent or mitigate the dangers associated with unauthorized excavations and the attendant installation of devices by entities seeking to exploit the pipelines for other purposes, and to remind operators and the public of the need to ensure that underground pipeline facilities are adequately located and protected from inadvertent damage prior to excavations.

Advisory: RSPA/OPS urges all owners and operators of gas and hazardous liquid pipelines to vigilantly monitor their right-of-ways for unauthorized excavation and the installation of data acquisition devices by third parties seeking to extract product movement information from the pipelines. This activity can impact pipeline integrity either through damage to the pipeline caused by the excavation activities or damage to the pipe coating caused by the attachment of the devices to the pipeline. The installation of pipeline monitoring devices should only be performed with the express knowledge, consent, and support of the pipeline operators.

Damage to underground facilities caused by unauthorized excavation can occur without any immediate indication to the operator. Sometimes a damaged underground pipeline facility will not fail for years after the completion of excavation activities. Excavation equipment does not need to fully rupture a pipeline facility to create a hazardous situation. Damage to coatings and other corrosion prevention systems can increase the risk of a delayed

corrosion failure. Escaping and migrating gas can create a safety issue for people living and working near these facilities long after the completion of excavation activities. Leakage from a damaged or ruptured hazardous liquid pipeline can create environmental and safety issues. The primary safety concern is to ensure that excavation operations do not accidentally contact existing underground pipeline facilities. This can be averted by knowing the precise locations of all underground pipeline facilities in proximity to excavation operations and closely monitoring excavation activities.

Issued in Washington, DC, on August 12, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–18903 Filed 8–17–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 10, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 17, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0068.

Form Number: IRS form 2441.

Type of Review: Extension.

Title: Child and Dependent Care Expenses.

Description: Internal Revenue Code (IRC) section 21 allows a credit for child and dependent care expenses to be claimed on Form 1040 (reduced by employer-provided day care benefits excluded under section 129). Day care provider information must be reported to the IRS for both the credit and exclusion. Form 2441 is used to verify that the credit and exclusion are properly figured, and that provider information is reported.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 6,519,859.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—39 min.

Learning about the law or the form—25 min.

Preparing the form—1 hr., 7 min.

Copying, assembling, and sending the form to the IRS—27 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 17,408,024 hours.

OMB Number: 1545–1022.

Form Number: IRS Form 7018–C.

Type of Review: Extension.

Title: Order Blank for Forms.

Description: Form 7018–C allows taxpayers who must file information returns a systematic way to order information tax forms materials.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 868,432.

Estimated Burden Hours Respondent: 3 minutes.

Frequency of response: Annually.

Estimated Total Reporting Burden: 43,422 hours.

OMB Number: 1545–1141.

Notice Number: Notice 89–102.

Type of Review: Extension.

Title: Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance.

Description: Section 597 of the Internal Revenue Code provides that the Secretary provide guidance concerning the tax consequences of Federal financial assistance by qualifying institutions. These institutions may defer payment of Federal income tax attributable to the assistance. Required information identifies deferred tax liabilities.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 250.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of response: Annually.

Estimated Total Reporting Burden: 20 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–18898 Filed 8–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to lessening the burden for individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Monday, September 13, 2004.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, September 13, 2004, from 8 a.m. P.d.t. to 9 a.m. P.d.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: August 12, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–18937 Filed 8–17–04; 8:45 am]

BILLING CODE 4830–01–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Diamond Fork Canyon Group-Site Campground Draft Environmental Assessment

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of availability of the Draft EnvironmentalAssessment for constructing a group-site campground in Diamond Fork Canyon, Utah County, Utah.

SUMMARY: The Spanish Fork Ranger District of the UintaNational Forest proposes to design, construct, and operate a group-site campground in Diamond Fork with a capacity of approximately 475 PAOT (people at one time). The Utah Reclamation Mitigation and Conservation Commission is proposing to fund the project as part of meeting the recreation development responsibilities for developed camping identified in the Reclamation Projects Authorization and Adjustment Act of 1992, as amended (Pub. L. 102–575; Pub. L. 106–140).

The project area is located approximately 12 miles south east of Spanish Fork in Utah County, Utah. The group-site facility would encompass approximately 25 acres. The campground would include four–75 PAOT sites, one–100 PAOT site, three–25 PAOT sites, and five–4 unit vault toilets (or flush toilets if the water source allows), paved access road and spurs, shade shelters, a water system, trail system, the establishment of vegetation, a host site and an information/fee station. The proposed project would be constructed no earlier than fall 2004.

The draft Environmental Assessment is available for review and comment; comments will be used to help complete a final analysis and to make a decision on the proposed action and alternatives.

To maintain eligibility for appeal, each individual or, for an organization, an authorized representative, must submit substantive comments and must sign the comments or otherwise verify their identity.

Received comments, including names and addresses of those who comment, will be considered part of the public record for this project and available for public inspection, and will be released if requested under the Freedom of Information Act.

DATES: Written comments on the Draft EnvironmentalAssessment are invited until September 15, 2004.

ADDRESSES: You may submit substantive comments by any of the following methods:

- *E-mail: comments-intermtn-uinta-spanishfork@fs.fed.us.*
- *Mail:* William A.R. Ott, Spanish Fork District Ranger, 44 West 400 North, Spanish Fork, Utah 84660.
- *Hand Deliver:* You may hand-deliver your comments to the above address from 8 a.m. to 4:30 p.m., Monday throughFriday, excluding Federal holidays.
- *FAX:* (801) 798–3050.

FOR FURTHER INFORMATION CONTACT: Duane Resare, Diamond Fork Group-Site Campground Project Manager, (435) 623–3397 or (801) 361–1654; or Richard Mingo, Mitigation Commission, (801) 524–3146, *rmingo@uc.usbr.gov*; or additional information may be obtained through the Internet at: *http://www.fs.fed.us/r4/uinta/projects/projects/proposed_projects.shtml.*

Dated: August 9, 2004.

Michael C. Weland,

Executive Director.

[FR Doc. 04–18867 Filed 8–17–04; 8:45 am]

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Federal Register

Wednesday,
August 18, 2004

Part II

The President

Proclamation 7805—National Airborne Day, 2004

Federal Register
Vol. 69, No. 159
Wednesday, August 18, 2004

Presidential Documents

Title 3—

The President

Proclamation 7805 of August 16, 2004

National Airborne Day, 2004

By the President of the United States of America

A Proclamation

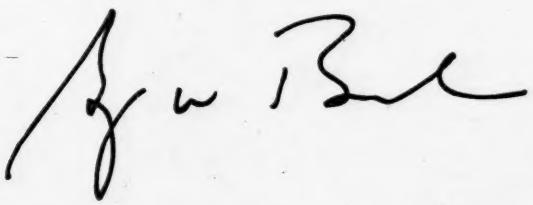
Americans look to the members of our Armed Forces as examples of honor and patriotism. On National Airborne Day, we commemorate the first official Army parachute jump on August 16, 1940, and salute a distinguished group of individuals whose courage and dedication have earned them a cherished place in American history.

Our Nation's Airborne forces have helped liberate millions from oppression and extend peace and freedom around the world. From the initial tests of this new medium of warfare, to the establishment of venerable units serving today, these brave men and women have expanded the vision and capabilities of our Armed Forces. The Army designated the first Airborne division on August 15, 1942, and the 82nd Airborne Division set the standard for achievement and built a proud legacy of service. Many units followed in their footsteps, fighting bravely in battle and serving our country with distinction in World War II, Korea, Vietnam, and other critical missions.

Today's Airborne forces continue the tradition of excellence and determination as we fight the global war on terror. In Afghanistan and Iraq, they have helped advance peace and democracy and defended the American people from danger. We are grateful for their service and continue to stand solidly behind the men and women of our Airborne forces, and all those in our military, as they serve on the front lines of freedom.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 16, 2004, as National Airborne Day. I encourage all Americans to join me in honoring those who have served in the Airborne forces. I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of August, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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108th Congress

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